

# Understanding family and friends care: local authority policies – the good, the bad and the non existent

Roth D, Aziz R and Lindley B  
Edited by Ashley C

# **Understanding family and friends care: local authority policies – the good, the bad and the non existent**

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*“Keeping children as close as possible to their family and social culture reduces the likelihood of placement breakdown, reduces the anxiety in children of having to live with strangers in an unfamiliar environment and often results in better outcomes for the child.”*

London Borough of Ealing’s family and friends care policy

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# 1. Key Findings

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1. Whilst 55% of English local authorities have a family and friends care policy, 45% did not, more than five months after the deadline set by Government in statutory family and friends care guidance<sup>1</sup>. In those authorities, practitioners do not have clear direction and family and friends carers are left without information about what help is available for them and the children they are raising and how they can access it.
2. 88% of local authorities have provided contact details for their lead manager with responsibility for family and friends care which should lead to improved accountability.

## Analysis was then conducted on 52 of those local authority family and friends care policies. This found that:

1. Few authorities appear to have drawn upon local demographic data, to have collaborated with partners or to have consulted children, carers or parents in developing their local policy. This widespread **lack of an evidence base and failure to consult** with relevant family members suggests that many of the local policies will not adequately address the needs of the very people they are designed to help.
2. 83% refer to the **principle** that children should be enabled to live within their families unless that is not consistent with their welfare but 42% of policies fail to make any reference to the important principle that support should be based on the needs of the child rather than the child's legal status.
3. A sizeable majority of policies provided **information about the key legal options**, emergency placements and the nature of decisions which carers could make but 42% did not provide any information about the legal implications of these orders, making it hard for family and friends carers to understand their legal situation. There is also evidence of substantial failure by some policies to take full account of and explain relevant case law<sup>2</sup>. These omissions have key implications for the legal status of the child and their access to support.
4. 56% of policies failed to signpost family and friends carers to **local universal support services**. Little work appears to have been done to ensure that partner agencies understand the difficulties and needs of family and friends carers.

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1 DfE (2011) Statutory Guidance on Family and Friends Care, <https://www.education.gov.uk/publications/eOrderingDownload/Family%20and%20Friends%20Care.pdf>

2 Southwark LBC v D [2007] EWCA Civ 182; R (SA) v Kent County Council [2011] EWCA Civ 1303

5. Although research<sup>3</sup> reveals how important it is to family and friends carers to have access to **independent advice and information**, the majority of policies (56%) do not inform carers how they might obtain this. By contrast a significant minority (44%) did so, with some providing extensive lists of the independent organisations that could advise carers.
6. Only one fifth say they will consider paying towards family and friends carers' **legal fees**.
7. A quarter of the policies provide full information about state benefits and allowances and a fifth include good signposting information to get advice about benefits and financial help. However, 63% provide no such information.
8. 38% of policies partly or fully describe **eligibility for financial help under section 17** for a child in need and 33% set out how carers could apply for this help with details of their eligibility criteria. Unfortunately the majority of policies do not.
9. Almost three quarters of policies (73%) fail to state that **payments to family and friends foster carers** will be at least the minimum amount set by the Department for Education and, despite case law on this point, half the policies do not state that fostering allowances should be calculated in the same way as allowances for all other foster carers<sup>4</sup>. There is also evidence of a few policies being in direct contradiction of the guidance on this issue.
10. Nearly half (47%) of policies mention that family and friends carers in social **housing** should be given priority to move to accommodate the child or children. However, only a very small number of policies (6%) refer to protocols between housing and social care services to help realise this.
11. Less than half of the policies provide full information about local resources for **supporting contact between children and their parents or other relatives** and how carers can make use of these services
12. 56% of policies say that **family group conferences** are a good way of identifying potential carers from within the family network, if a child can't remain with their parents.
13. Only a minority (39%) of policies mention **support groups** for family and friends carers, despite them being of significant benefit to carers and children and being relatively cheap and easy to set up and sustain
14. Three quarters of policies fail to explicitly state **that family and friends carers should not be disadvantaged because of their prior relationship with the child**, and only four policies make a clear statement that it is not acceptable to discriminate against foster carers who have a pre-existing relationship with the child they are fostering. However, half of the policies make it clear that family and friends foster carers should have access to training.
15. In terms of **readability**, the majority of policies were judged to be clearly written in plain English

<sup>3</sup> Hunt, J. and Waterhouse, S. (2012) *Understanding family and friends care: the relationship between need, legal status and support Part 1: carers' experiences*

<sup>4</sup> R (L and others) v Manchester City Council [2001] EWHC Admin 707

# 1. Introduction

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## 1.1 Context

Last year the Government introduced statutory guidance for local authorities on family and friends care<sup>5</sup>. This guidance has the potential to be a turning point in the way that such carers and children are treated. A key aspect of the guidance was a requirement for all English local authorities to publish a family and friends care policy by 30th September 2011.<sup>6</sup> The guidance also included detailed guidelines on what the policy should address and the need for a senior manager in each authority to have overall responsibility for the family and friends care policy. This report analyses how authorities have responded to the guidance.

Family and friends carers are grandparents, aunts, uncles, siblings, other relatives and friends who step in to take care of a child when they can no longer remain with their parents. An analysis of the 2001 census showed that at the time there were 173,200 children in the UK who were being raised by relatives. The numbers were then on an upward trajectory, and have probably increased considerably since then.

Family Rights Group's recent web survey of family and friends carers<sup>7</sup> showed that there were four main reasons that children had gone to live with their family and friends carer: abuse or neglect, parental substance misuse, parental mental illness and domestic violence.

In-depth research into family and friends care arrangements has shown that despite problems faced by carers themselves (poverty, ill-health, and overcrowding) and despite poor support from local authorities, the children felt happy and secure and did comparatively well. Outcomes for these children were as good as or better than outcomes for children who had been placed with foster carers previously unknown to them.<sup>8</sup>

An earlier Freedom of Information request to local authorities on family and friends care (Roth, 2009) discovered significant disparities between authorities<sup>9</sup> in their treatment of family and friends carers, and that the majority of councils (69%) did not have a written coherent approach to family and friends care. Despite a small number of beacons of excellence, overall there was an absence of written policies, procedures or guidance on assessment

and financial and practical support for the vast majority of children being raised by family and friends carers.

The new statutory guidance for English local authorities' on their work with family and friends carers provides an opportunity to address many of the problems that have beset family and friends care, and enable more children to live safely and thrive in such placements, rather than go into unrelated care.

## 1.2 Requirements and expectations of the statutory guidance on family and friends care

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The statutory guidance specifically addresses how local authority family and friends care policies should be produced, and what they should cover.

### Designing and implementing the policy:

local authorities should ensure that the policy is developed in the following way:

1. It should 'promote permanence for children by enabling those who cannot live with their parents to remain with members of their extended family or friends, where this is a better alternative to growing up in the care of the local authority.'<sup>10</sup>
2. It should be 'underpinned by the principle that **support should be based on the needs of the child rather than merely their legal status**'<sup>11</sup> (our emphasis).
3. It should be 'clearly expressed, regularly updated and made freely and widely available with publicity, via websites and leaflets.'<sup>12</sup>
4. Local authorities 'must **consult children and young people, family and friends carers and parents** when drawing up their policies'<sup>13</sup> (our emphasis).
5. There should be 'a senior manager who holds overall responsibility for the family and friends care policy.'<sup>14</sup>
6. The policy should be evidence based, drawing upon information about the number of family and friends foster carers and the special guardians and adopters the local authority is supporting.<sup>15</sup>
7. Local authority staff should 'understand the policy' and 'operate within its framework so that

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5 DfE (2011) *Statutory Guidance on Family and Friends Care*, <https://www.education.gov.uk/publications/eOrderingDownload/Family%20and%20Friends%20Care.pdf>

6 DfE (2011) *Ibid*, chapter 4, para 4.2

7 Aziz, R., Roth, D. and Lindley, B. (2012) *Understanding family and friends care: the largest UK survey* (London) Family Rights Group

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

9 Roth, D (2009) *Report on Freedom of information survey of local authority policies on family and friends care* Family Rights Group in association with the University of Birmingham

10 DfE (2011) *Ibid*, para 4.5

11 DfE (2011) *Ibid* para 4.6

12 DfE (2011) *Ibid*, para 4.2

13 DfE (2011) *Ibid* para 4.8

14 DfE (2011) *Ibid* para 4.9

15 DfE (2011) *Ibid*, para 4.10

**it is applied in a consistent and fair manner across the authority'**<sup>16</sup> (our emphasis).

8. Staff who are responsible for working with family and friends carers and are implementing the policy 'should have the appropriate training and understanding of the issues which family and friends carers face'.<sup>17</sup>

### **Contents of the Policy:**

The statutory guidance also states that the local policy should include the following:

#### **1. Legal framework:** this includes:

- an explanation of the authority's powers and duties in relation to children in need and looked after children;
- the meaning and implications of different legal arrangements for family and friends care;
- the rights of carers and of the children's parents when children are in family and friends care;
- the kind of decisions which family and friends carers will be able to make about the child depending on the legal arrangement; and
- the effect of a residence order, special guardianship order or adoption order.

This must be in a format which is accessible to family and friends carers and parents. The purpose is to ensure that members of the public have the necessary information to make informed choices about the options open to them.

#### **2. Easily accessible, local information for carers:** about

- how to access targeted and specialist services which may be required, such as special educational needs services and CAMHS;<sup>18</sup>
- where to get independent advice;<sup>19</sup>
- 'the respective implications of court orders which give them parental responsibility, so that they fully understand the implications of applying for such an order';<sup>20</sup>
- 'their entitlement to any state benefits and allowances, such as child benefit and child tax credit' and where they can go for information and advice, such as benefits

advice services. These agencies should also be made aware of the particular difficulties which many family and friends carers face so that they provide a responsive service;<sup>21</sup>

- local contact centres and family mediation services to help them resolve any contact difficulties which may arise, although where there are safeguarding concerns children's services may need to be involved to support safe contact arrangements.<sup>22</sup>

#### **3. Financial help**<sup>23</sup>: Policies should:

- acknowledge that family and friends carers who are struggling to cope financially may need financial assistance for one-off expenditure, such as school clothing or bedroom furniture, or on a more regular basis either to enable them to make adjustments or to make it possible to continue to care for a child in the longer term;
- ensure family and friends carers are included in the eligibility criteria for payments under s.17(6)<sup>24</sup>, and that they are made aware of this fact and when means testing applies and how they can apply for these payments; and
- ensure that when financial support is offered, a written agreement is drawn up<sup>25</sup> setting out the level and duration of the support that is to be provided, and the mechanism for review so that everyone involved is clear about the arrangements.

4. **Housing:** Carers who need it should receive support with accommodation which can also come out of the s.17(6) budget<sup>26</sup> unless the child is looked after, and the guidance also states that whenever possible family and friends carers living in social housing should be given appropriate priority to move to more suitable accommodation if this will prevent the need for a child to become looked after.<sup>27</sup>

5. **Family Group Conferences:** Local policies should also set out the arrangements' for holding a family group conference as a way of identifying family and friends carers for a child.<sup>28</sup>

6. **Support Groups:** Local authorities should work with partner agencies and the voluntary sector to

16 DfE (2011) Ibid, para 4.11

17 DfE (2011) Ibid para 4.12

18 DfE (2011) Ibid para 4.15-17

19 DfE (2011) Ibid para 4.18

20 DfE (2011) Ibid para 4.51

21 DfE (2011) Ibid para 4.20

22 DfE (2011) Ibid para 4.30

23 DfE (2011) Ibid paras 4.19-4.23

24 DfE (2011) Ibid para 3.7. Note also that s.17(6) Children Act 1989 was amended by the Children and Young Person's Act 2008 to remove the qualification that s.17(6) payments could be made in exceptional circumstances only. Thus payments under this section can now be made routinely.

25 DfE (2011) Ibid para 4.23

26 DfE (2011) Ibid para 4.22

27 DfE (2011) Ibid para 4.24

28 DfE (2011) Ibid para 4.34-37



find ways to encourage peer support and access to support groups.<sup>29</sup>

- 7. S.20 accommodation (i.e. where children are 'looked after' voluntarily, and not by a court order):** Local policies should include information about the local authority's powers and duties including when a child may be accommodated or when care proceedings may be instigated, and how and by whom such decisions are made.<sup>30</sup>
- 8. Family and friends foster care:** Family and friends foster carers should be fully supported to care for children placed with them, including receiving training and tailored support, and should not be disadvantaged because they had a prior relationship with the child. This includes being paid a fostering allowance which should be at least the minimum set annually by the Department for Education and this should be calculated for family and friends foster carers on the same basis as for all other foster carers. Any variations should relate to the child's needs, the skills of the carer or some other relevant factor that is used as a criterion for all other foster carers.<sup>31</sup>

### 1.3 Aims of the study

This study aims to examine the extent to which local authorities are complying with this statutory guidance. The study aims to identify and promote examples of best practice in the way authorities are addressing family and friends care and to highlight where authorities are falling far short of the guidance.

### 1.4 Design of the study

A letter containing a Freedom of Information request was sent by Family Rights Group on behalf of the Kinship Care Alliance<sup>32</sup> to all Directors of Children's Services of English local authorities in October 2011, after the government's 30th September deadline for family and friends care policies to be produced had passed. The following questions were included within the letter:

1. Has your local authority published a policy on family and friends care? If so please supply a copy and a web address of its location on your website.
2. What process did you use to develop the policy? How did you consult children and young people,

family and friends carers and parents in the drawing up of policies? (As specified in paragraph 4.8 of the Statutory Guidance for Local Authorities.)

3. What is the name, position and contact details of the senior manager who holds overall management responsibility for the family and friends care policy? (As specified in paragraph 4.9 of the Statutory Guidance.)
4. What steps are you taking to publicise the policy and make it available to family and friends carers and other relevant stakeholder, for example through leaflets and weblinks? (As specified in paragraph 4.3 of the Statutory Guidance.) Please supply copies of any leaflets.
5. What procedures are being put in place to regularly update the policy (as specified in paragraph 4.2 of the Statutory Guidance) and ensure that its implementation is monitored and evaluated?

Follow-up emails were sent in January and February 2012 to authorities whose response had either not been received or was incomplete, or who had replied to state that their policies were not yet completed.

Family Rights Group has published on its website links to all local authority policies received, and contact details of senior managers responsible for family and friends care in their area. This can be found at: <http://www.frg.org.uk/involving-families/family-and-friends-carers/local-policies-and-contacts>. This list will continue to be updated as new information arrives.

### 1.5 Analysis of the study

The analysis was carried out by volunteers who either had experience in family and friends care or had a legal background. Training and consultation was provided by David Roth, Family Rights Group's policy adviser on family and friends care, to ensure consistent standards were applied. The analysis of each policy was placed on Excel spreadsheets, and from there they were transferred to NVIVO data analysis software, which was used to produce the tables and the statistical information used in this report. The latter work was undertaken by Rachida Aziz, Family Rights Group's policy assistant.

A template was designed to support the analysis of the policies received. The policies

29 DfE (2011) Ibid para 4.38-40

30 DfE (2011) Ibid para 4.43

31 DfE (2011) Ibid para 4.42-50

32 The Kinship Care Alliance is a group of organisations, academics and practitioners who subscribe to a set of shared aims and beliefs on the issue of family and friends care. It meets regularly to develop a joint policy agenda and agree strategies to promote the alliance's aims. To find out more go to <http://www.frg.org.uk/involving-families/family-and-friends-carers/kinship-care-alliance>

were compared to a checklist, primarily based on the requirements of the statutory guidance (summarised above), but also including additional information about family and friends care not covered by the guidance, such as whether or not the policy states the circumstances in which the local authority would pay a carer's legal fees, whether the policies were consistent with certain important case law precedents, and whether the needs of particular groups of carers (older carers, younger carers, those with multiple caring responsibilities) had been considered.

In general, it was only the policies themselves that were subject to the analysis. Information that was in a covering letter, for example, was not considered, with a few specific exceptions regarding how the policy was being publicised and how partner agencies had been consulted in making the policy.

Policies were scored according to how well they had covered the separate sections of the policy: stated context of the policy; values, principles and objectives; evidence base; management accountability; legal arrangement; services and support; financial support; housing/accommodation; supporting contact; family group conferences; support groups; private fostering; family and friends foster carers; and complaints. Analysts were asked to score whether the section of the statutory guidance had been covered by the policy wholly, partly or not at all, and to identify those which could be held as examples of good policy and practice.

Analysts were also asked to comment on the use of plain English. The clear intention of the statutory guidance is that these policies should be available for family and friends carers themselves to read and understand, and not just as a working tool to guide practitioners. Analysts were therefore asked whether they considered it would be possible for a reader with no special background in law or social work to understand what the policy was saying.

## **1.6 Acknowledgements and thanks**

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Firstly, significant thanks are due to the Family Justice Council who were the main funders for this study and to Trust for London, Tudor Trust and Noel Buxton Trust all of whom generously helped fund this work. We are also grateful to Comic Relief for their contribution to this project, through their funding of Grandparents Plus' Older Carers campaign.

Secondly, we are very grateful to the following volunteers and workers who spent significant amounts of time reading through and analysing of the policies we received:

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Cassie Felton (family and friends carer, Family Rights Group trustee)  
Louise Forsyth (law graduate, Family Rights Group volunteer)  
Pat Strachan (Grandparents Plus trustee)  
Peter Hulme (Grandparents Plus)  
Daniel Supperstone (law graduate, Family Rights Group volunteer)  
Hannah Venn-Munns (solicitor, Family Rights Group volunteer)

Thirdly, we would like to acknowledge the work of many officers within local government who did respond promptly to our request for information and in particular to those who have produced excellent policies or whose ambition is to do so.

## 2. The legal framework

### 2.1 Context

This chapter sets out the legal framework for promoting and supporting family and friends care in England and Wales.

Typically, relatives and friends who step in to care for children who cannot remain at home with their parents have two key needs:

- i) the need to be able to make decisions about how the child in their care is raised; and frequently,
- ii) the need to have financial and other support to care for them.

As stated in chapter 1, the government issued statutory guidance to local authorities on family and friends Care<sup>33</sup> in April 2011. The key requirements and expectations of that guidance, including the requirement on local authorities to have a local policy on family and friends care, are set out in chapter 1.

The key principle underpinning this guidance is that... *'No child or young person should have to become looked after... for the sole purpose of enabling financial, practical or other support to be provided to the child's' carer.*<sup>34</sup> However, in practice there is significant variation in how these children's needs are met, often linked to the legal status of the child: when children are looked after local authorities must support them and when they are not, local authority support is at the council's discretion. We have therefore set out below the different legal statuses<sup>35</sup> under which a child in family and friends care may be raised and the key relevant legal provisions about how decision are made and what support is available.

The key legal statuses include:

- Private arrangements whereby children are living with family and friends carers as a result of a

private arrangement between the parents and the carer. This can include private fostering,

- Children live with relatives or friends under a residence or special guardianship order; or
- Children are looked after by the local authority (whether in care or accommodation) and placed with relatives or friends who are approved as local authorities foster carers on a short or long term basis.

### 2.2 Private arrangements

#### What is a private arrangement and what are the implications?

When arrangements for a child to live with a relative or friend are made directly between the parents and the carers and the local authority is not involved, the carer does not have parental responsibility<sup>36</sup> for the child (unless they are successful in applying to court for a residence or special guardianship order - see below). This directly affects their ability to make decisions about the child's care: they have a right to make decisions on most day to day matters<sup>37</sup> but they must refer back to the parents or others with parental responsibility for all important decisions about their care<sup>38</sup>. This can be very difficult when there are tensions between the parent (or others with parental responsibility) and carer or if the parent (or others with parental responsibility) is absent since they will need their consent to important routine things like consent to medical or dental treatment and school trips.

In these circumstances many carers need to be referred to:

- sources of independent advice and advocacy to find out how they may acquire parental responsibility for example by applying to court for a residence or special guardianship order<sup>39</sup>; and
- family mediation to help them negotiate any difficult issues with the parents<sup>40</sup>. Public funding

33 DFE, Statutory Guidance on Family and Friends Care (2011), <https://www.education.gov.uk/publications/eOrderingDownload/Family%20and%20Friends%20Care.pdf>. This guidance is issued under s.7 Local Authority Social Services Act 1970 which means that the local authority should comply with it unless there are exceptional local circumstances to justify not following it.

34 Ibid, para 2.19

35 Carers could also be testamentary guardians if they were appointed by the parents/special guardians in writing to raise their child after they die, and they have now died and the appointment has taken effect (s.5 Children Act 1989); or they could also have adopted the child. In both cases they have parental responsibility, giving them the right to make decisions about how the child is raised and the child will not be looked after by the local authority unless this has occurred subsequently. However, since these statuses occur very rarely in family and friends care, we have not included the detailed legal provisions which would apply but further information about this could be obtained from Family Rights Group free confidential advice service on 0808 801 0366 open 9.30-3.30 Mon-Fri or email [advice@frg.org.uk](mailto:advice@frg.org.uk).

36 Parental responsibility is defined as: "All the rights, duties, powers, responsibilities and authority, which by law a parent has in relation to the child and the administration of his or her property." (s.3(1) CA 1989). This includes consent to medical/dental treatment and school trips, what religion they will follow, agreeing to the child being taken outside the UK etc. One or more people can have parental responsibility at the same time.

37 s.3(5) Children Act 1989

38 ss. 2 & 3 Children Act 1989

39 They can be referred to Family Rights Group's free confidential advice service on 0808 801 0366 open 9.30-3.30 Mon-Fri or email [advice@frg.org.uk](mailto:advice@frg.org.uk). They may also be signposted to FRG's advice sheets: **DIY Residence Orders for Family and Friends Carers and DIY Special Guardianship Orders for Family and Friends Carers** <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

40 To find a mediator, you can contact:

- Your local National Family Mediation (NFM) service in your area. A list of services can be found at the following weblink; <http://www.nfm.org.uk> or you can also call NFM on 01392 271610 - open 9.00am - 5.00pm (Monday - Friday) or email: [general@nfm.org.uk](mailto:general@nfm.org.uk); or
- The Ministry of Justice's Family Mediation Helpline (on 0845 602 6627) who can refer you to a mediator from their joint register.

is available for mediation in this context, although it is means tested. Where this is not available the local authority could pay these mediation costs out of the s.17(6) budget where this would meet the child's assessed needs.

The local authority is not usually involved in such arrangements unless they are providing support for the arrangement as outlined below. However, if the family and friends carer is not a local authority foster carer or a grandparent, aunt, uncle, stepparent or sibling<sup>41</sup> and the arrangements is to last more than 28 days then it will also be termed a private fostering arrangement. In these circumstances both the parent and the carer are under a duty to notify the local authority which must then investigate, inspect the premises and monitor the arrangement by regular visits.<sup>42</sup>

#### i) Financial support for private arrangements

The starting point is that the parents remain legally liable to support their child<sup>43</sup>; the family and friends carer is not legally liable to maintain the child. However, the very nature of these placements means that the parents are often unable to provide for their child. The only other sources of financial support for family and friends carers when there is a private arrangement are:<sup>44</sup>

- state benefits, including child benefit and certain means tested benefits and tax credits to which they may be entitled if the carer is on a low income or is not working; and,
- if the child is assessed as being in need under s.17 Children Act 1989<sup>45</sup>, they may be able to get discretionary support from the local authority under s.17 (6). As stated chapter 1, prior to April 2011, cash help under this section could only be provided in exceptional circumstances, but this restriction has now been removed so that both one off and ongoing cash help can be given to family and friends carers provided the child is deemed to be in need. Moreover, the statutory guidance on family and friends care

says that the local authority eligibility criteria for s.17 support should include children living with family and friends carers<sup>46</sup> and where financial support is offered, a written agreement should be drawn up setting out the payment arrangements.<sup>47</sup>

#### ii) Support for young people in further and higher education

Children in private family and friends care arrangements may receive some financial help with further and higher education:

##### Further education:

- There is a new 'bursary' scheme (which replaced Education Maintenance Allowance) for 16-19 year olds who stay on in further education after GCSEs.
- If the young person is not looked after by the local authority, the young person can apply to their school or college for the bursary but there is no right to it – it is administered by schools and colleges on a discretionary basis for students in non-advanced education (i.e. below university degree level).
- However, some young people do have a right to £1200 per year payment including
  - those who are disabled (getting both ESA and DLA);
  - those on income support (e.g. because they are living independently); and
  - 16-17 year olds in the care system and 18-19 year old care-leavers.<sup>48</sup>

##### Higher Education:

A student applying for university financial support is assessed on the basis of their own and their parents' household income.

- A parent is defined as a natural or adoptive parent, so it does not include any other type of carer. This means that the income of a family and friends carer under a private arrangement will not be taken into account unless they have adopted the child.

41 This is the definition of 'relative' set out in s.105 Children Act 1989

42 The Children (Private Arrangements for Fostering) Regulations 2005

43 s.1 Child Support Act 1991

44 For more detailed information see FRG advice sheet **Support for relatives and friends who are caring for someone else's child** <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

45 The definition of a child in need is set out in s.17(10) Children Act 1989 and includes a child who is aged under 18 and:

- who is unlikely to achieve or maintain a reasonable standard of health or development without the provision of appropriate services by a local authority; or

- whose health or development is likely to be significantly impaired or further impaired without the provision of appropriate services by a local authority; or
- who is disabled.

46 Ibid para 3.7

47 Ibid para 4.23

48 See: <http://www.ypla.gov.uk/learnersupport/16-19-bursary> for more information.

- The young person will still be financially assessed on the basis of their parent's household income, even if they do not live with them, unless they are classed as an independent student. If the student<sup>49</sup> is an independent student they will be financially assessed on their own income.

### iii) Practical and emotional support

The local authority must also *provide other practical and emotional support* to children who are assessed as being in need in their area under s.17<sup>50</sup>, including those in family and friends care. The content of the guidance set out in chapter 1 provides further detail on the kinds of services that would be most helpful in supporting family and friends care.<sup>51</sup> However, how this is applied in individual cases depends on the local authority assessing their needs both to decide if they fall within their eligibility criteria to receive services under s.17<sup>52</sup> and to decide what services would be appropriate to meet those needs.<sup>53</sup> The kinds of services available may include:

- **Counselling and social work support** for the child;
- **Day Care** which could include day nurseries, playgroups, child minding, and out of school clubs;
- **Advice and guidance** for example about services available in their area including childcare, nurseries, schools, colleges, leisure facilities etc<sup>54</sup>; and also signposting to advice about benefits and tax credits<sup>55</sup>
- **Help with contact arrangements** to enable the child to stay in touch with members of the family whilst they are in family and friends care. As stated in chapter 1, this can include financial help and also being referred to contact centres and mediation services where support is needed to help resolve contact difficulties or adjust the arrangements.<sup>56</sup> If the carer is not eligible for

public funding, help with the costs of mediation could be given out of the s.17 (6) budget of this met the child's assessed needs.

- **Help with accommodation:** Again, as stated in chapter 1, this should include help to obtain suitable accommodation with the housing and social care departments of the local authority working together to ensure that family and friends carers' housing needs are prioritised to avoid the child becoming unnecessarily *looked after* (i.e. going into state care)<sup>57</sup>. It could also involve Children's Services giving the family and friends carer financial help with the deposit to rent a bigger flat or in some rare cases to build an extension onto their house where their existing accommodation is too small to include the child, again out of the s.17(6) budget.
- **Respite accommodation** whereby the child may go to stay with unrelated foster carers for a short period, with the agreement of the parent or someone else with parental responsibility, in order to give the family and friends carer a break from their caring responsibilities. This service is most frequently available to disabled children on a 'short break' basis, but Children's Services can provide respite accommodation for any children in need who would benefit from this if they meet the criteria in s.20.<sup>58</sup>
- **Support groups** for family and friends carers.<sup>59</sup>

### What about children who are placed with family and friends carers by the social worker but are then deemed to be in a private arrangement?

When there is a crisis in the parental home and there is a risk to the child's safety and well-being, the local authority is likely to be involved in making sure plans for the child are safe and that their well-being will be promoted. This may be in the context of child protection enquiries<sup>60</sup> and/or they may refer the family to a family group conference.<sup>61</sup> It is increasingly common practice in these circumstances for the local authority to ask relatives

49 A young person is treated as 'independent' where they are estranged from their parents (in the opinion of the Secretary of State), or their parents have both died, or they were looked after by Children's Services for 3 months ending on or after their 16th birthday and before the first day of their further education course. The 'independent student' category is decided on a case by case basis, depending on the particular circumstances of that family. Usually a young person will not be considered estranged from their parents unless they have had no contact for more than one year, or can show in some other way that their relationship with their parents has broken down irreconcilably. Further information can be found at <http://www.direct.gov.uk/en/educationandlearning/index.htm>

50 s.17(1) Children Act 1989

51 As stated in chapter 1, the local family and friends care policy should explain how carers can find out about these services from local leaflets and websites and accountability for service provision lies with the senior officer who is responsible for implementation of the local policy in the area.

52 As stated above and in chapter 1, the statutory guidance specifically states that the eligibility criteria should include children living in family and friends care, para 3.6

53 Government guidance in **Working Together to Safeguard Children** 2010, para 5.75 says that this help for a child in need should never be dependent on the child being at risk of harm; it should be based on an assessment of the child's needs – see <https://www.education.gov.uk/publications/eOrderingDownload/00305-2010DOM-EN.pdf>

54 DfE (2011) *Ibid* para 4.15-18

55 DfE (2011) *Ibid* para 4.20

56 Sched 2 para 10 Children Act 1989 and *ibid* paras 4.27-33

57 *Ibid*, para 4.24

58 s.20 Children Act 1989

59 *Ibid* paras 4.38-41

60 s.47 Children Act 1989

61 Further information about FGCs can be found in FRG advice sheet on Family Group Conferences <http://www.frg.org.uk/need-help-or-advice/advice-sheets> and **Family Group Conferences in the Court Arena** <http://www.frg.org.uk/involving-families/family-group-conferences/fgc-news-and-developments>



or friends to look after a child without any court proceedings being initiated and sometimes without the parents being actively involved in making the arrangement. Such placements may be made in an emergency, with little or no planning of the placement involved, yet frequently become the long term or permanent arrangements by default.

Such arrangements can be problematic for family and friends carers. It is common for the local authority to argue that the child is in a private arrangement, that they do not need to remain involved and that, as a result, they are not under any legal duty to provide financial or other support to the placement.<sup>62</sup> This leaves the carer unclear as to what they are allowed to decide about raising the child since they do not have parental responsibility for the child and also removes their right to support from the local authority and leaves them dependent on discretionary support.

This practice has been held to be unlawful: the Court of Appeal has confirmed that where the local authority has been involved in making such a placement and has not agreed otherwise with the carer, the child should be treated as being looked after by the local authority,<sup>63</sup> although obviously parental consent to this or a care or emergency protection order should also be obtained. In such circumstances, the family and friends carer should be treated as a local authority foster carer and should therefore be assessed and approved as such<sup>64</sup>. They should also be entitled to receive a fostering allowance and support to care for the child<sup>65</sup>. This is discussed further below under section 3.5.

However many local authorities still seek to avoid this legal status for the child, at least in part because of the resource commitment involved. Family and friends carers in this situation should be referred to sources of independent legal advice as a matter of urgency.<sup>66</sup>

## 2.3 Residence orders

A family and friends carer who wishes to have more autonomy over their care of the child often decides (sometimes with the encouragement of the local

authority) to apply for a residence order. The local authority can provide financial assistance towards the legal costs incurred in making this application out of their s.17(6) budget<sup>67</sup> but again this is discretionary.

A residence order decides where a child will live and confers parental responsibility on the person in whose favour the order is made. It normally lasts until the child is 18 unless it is revoked or otherwise specified by the court. The child's parent's have a right to apply to court to revoke a residence order and this would be decided on the basis of what the court considered was in the child's best interests.

### i) Residence orders and making decisions about the child

Unless a court order specifically says otherwise, a family and friends carer with a residence order may make most important decisions about the child's care, for example regarding contact arrangements, and can also consent to dental and medical treatment, school trips etc. However they may not take the child outside the UK<sup>68</sup> for longer than one month without the consent of everyone else with parental responsibility. Also, they may not appoint a testamentary guardian for the child, which can leave carers worrying about what may happen to the child after they die.

### ii) Residence orders and support

In terms of support, the position is similar to private arrangements. The parents are legally liable to support the child financially and the carer with the residence order is not, although they may end up having to do so in practice. As with private arrangements, where the parents are unable to provide, the carer with the residence order may be entitled to:

- state benefits including child benefit and certain means tested benefits and tax credits depending on their circumstances;
- if the child is assessed as being in need, the carer and the child may receive discretionary financial and other support from the local

62 Tapsfield, R (2001) 'Kinship Care: A Family Rights Group Perspective'. In Broad, B (ed.) (2001) *Kinship Care: the placement choice for children and young people* (Russell House)

63 Southwark LBC –v- D [2007] 1 FLR 2181; A –v- Kent Local Authority [2011] EWCA 1303

64 Emergency assessments of family and friends carers would take place under Reg 24 CPPCRR; full fostering assessments are conducted in accordance with Regulation 3 Fostering Services Regulation 2011.

65 s.22C Children Act 1989

66 They can be referred to Family Rights Group's free confidential advice service on 0808 801 0366 open 9.30-3.30 Mon-Fri or email [advice@frg.org.uk](mailto:advice@frg.org.uk), or to a specialist child welfare solicitor: contact Solicitors Regulation Authority, Ipsley Court, Redditch, Worcestershire B98 0TD Telephone: 0870 606 2555 <http://www.sra.org.uk/consumers/find-use-instruct-solicitor.page>; or The Law Society of England and Wales, 113 Chancery Lane, London WC2A 1PL Tel: 020 7242 1222 Minicom: 0870 600 1560 Fax: 020 7831 0344 E-mail: [info.services@lawsociety.org.uk](mailto:info.services@lawsociety.org.uk) [www.lawsociety.org.uk](http://www.lawsociety.org.uk) or search their website for local solicitors who are members of the Children Panel: <http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>

67 S.17(6) Children Act 1989

68 Re B (A Child) CA (Civ Div) 24/7/2007

- authority under s.17 as outlined under 2.2 above;
- a residence order allowance which the local authority has a discretionary power to pay<sup>69</sup>. Case law confirms that this can be paid by the local authority even if it was requested by the carer after the residence order was applied for<sup>70</sup>.

The position regarding support for further and higher education is the same as for private arrangements as set out under 2.2 above.

## 2.4 Special Guardianship Orders

Family and friends carers, who wish to seek a more permanent legal arrangement for a child, are increasingly choosing to apply for a special guardianship order (often with the support of the local authority).

A special guardianship order lasts until the child is 18 unless it is revoked by the court. It is more secure legally than a residence order because a parent cannot apply to revoke it unless they have the permission of the court and they will not get this permission unless they have evidence of a significant change in circumstances since the order was made<sup>71</sup>. However, unlike an adoption order, it does not sever the legal relationship between the child and his/her birth family.

### i) Special guardianship and decision-making about the child:

A special guardianship order gives the carer parental responsibility for the child which they may exercise to the 'exclusion of anyone else with parental responsibility'<sup>72</sup>. This means that the special guardian can make most decisions about the child without referring back to the parents<sup>73</sup> and they can also appoint a guardian to look after the child if they die<sup>74</sup>. However they still need the consent of everyone with parental responsibility or the permission of the court: to change the child's surname, to remove the child from the UK for more than 3 months, and where this is required by law (e.g. marriage between 16-18)<sup>75</sup>. They also have no right to override the parents' rights in relation to adoption or placement for adoption and they must notify the parent if the child dies.

However, as with residence orders, the child's parents can apply to the court for a prohibited steps order or specific issue order (s.8 CA) to ask the court to decide how parental responsibility should be exercised by the carer in relation to a particular issue which is in dispute. This opens up the possibility of the parent challenging the carer about key decisions relating to the child's care in spite of the special guardian having parental responsibility for them.

### ii) Special guardianship orders and support

Again, In terms of support for the arrangement, the position is similar to private arrangements, in that the child's parents are legally liable to support their child financially and the person with the special guardianship order is not, although they may end up having to do so in practice. Where the parents are unable to provide, a special guardian may be entitled to:

- state benefits, including child benefit and other means tested benefits, and tax credits depending on their circumstances;
- if the child is assessed as being in need, they and the child may receive discretionary ongoing financial and other support from the local authority under s.17 CA as outlined under 2.2 above.

In addition, the local authority has a *duty to establish special guardianship support services*.<sup>76</sup> This includes financial assistance, although this does not mean an individual carer is entitled to a specific service: the help they get will depend upon the local authority's eligibility criteria and an assessment of their needs. The local authority should therefore have a special guardianship financial support scheme in place, with clear eligibility criteria. The scheme should cover payment of a regular income set at the level of fostering allowances to support the placement, subject to a means test<sup>78</sup>.

Other support services include help with contact, support groups and assistance with legal costs, none of which are means tested<sup>79</sup>. In addition, if the

69 Sched 1 para 15 Children Act 1989  
70 R(H) –v- Essex CC [2009] EWHC 353

71 s.14D(3)(b) Children Act 1989

72 s.14C(1)(b) Children Act 1989

73 A parent retains the right to apply to the court for a prohibited steps order or specific issue order (s.8 Children Act 1989) to ask the court to determine how parental responsibility is exercised in relation to a particular issue which is in dispute, but the court is less likely to grant such an order than under a residence order because of the exclusive nature of the special guardian's parental responsibility.

74 s.5 Children Act 1989 as amended by s.115(4) Adoption and Children Act 2002  
75 S.14C Children Act 1989

76 s.14F Children Act 1989

77 Regulation 3, 6, 8, 9, 10 & 13 Special Guardianship Regulations 2005 (SGR)

78 R (on the application of B)(Claimant) –v- Lewisham LBC and MB [2008] EWHC 738

79 Regulation 3 & 13 SGR

child was looked after in the care system before the Special Guardianship Order was made, the local authority should also provide advice and assistance including financial support to the young person after they reach 18<sup>80</sup>.

As stated above an individual child or carer's access to these services in will depend on an assessment of need. ***If the child was looked after immediately before the Special Guardianship Order was made, the carer and child have a right to have their support needs assessed;*** but in all other cases, although there is a strong expectation that the local authority will carry out an assessment, this is identified in statutory guidance as being discretionary<sup>81</sup>. However, whether or not services are provided to meet the identified needs is a matter for the local authority's discretion informed by their assessment of need and detailed statutory guidance<sup>82</sup>.

The position regarding support for further and higher education is the same as for private arrangements as set out above.

## 2.5 Family and friends foster carers

### i) Who is a looked after child?

A child is looked after when they are in care under a care or emergency protection order or when they are in local authority accommodation by voluntary agreement with the parents/those with parental responsibility<sup>83</sup>.

### ii) Priorities for deciding where a looked after child should be placed

When a child is looked after in the care system, the local authority must first of all consider making arrangements for the child to live with their parents or others with parental responsibility or a person who has a residence order (subject to essential checks<sup>84</sup> being made), unless to do so would be contrary to their welfare, or is not reasonably practicable<sup>85</sup>. But if they are unable to make such an arrangement, then they must place the child in the most appropriate placement. When deciding which is the most appropriate placement, preference is given to relatives, friends or other people connected with the child (over unrelated

foster carers, children's homes or other statutory placements) provided they are approved as local authority foster carers and the placement with them is consistent with the child's welfare<sup>86</sup>. Such carers will be assessed under the new Fostering Services Regulations 2011 and the new National Minimum Standards for Foster Care 2011<sup>87</sup>.

### iii) Emergency placements with family and friends carers

Looked after children can be placed in an emergency with a relative, friend or other 'connected person' in an emergency provided the carer is approved on a temporary basis as a foster carer for them<sup>88</sup>. There is a new requirement for more detailed checks to be undertaken for any emergency placements than previously<sup>89</sup>. These do not necessarily have to be completed before the child comes to live with the carer but where this has not been possible, they must be done within days<sup>90</sup>. These emergency arrangements can last up to 16 weeks (and in exceptional cases they can be extended to 24 weeks) during which time the carer needs to be fully assessed and approved as a foster carer<sup>91</sup> in order for the placement to continue.

A relative or friend caring for a child in this context is required to enter into a fostering agreement with the local authority which includes mutual expectations and terms of the placement between the carer and the local authority, including social work and other support to be provided. They are able to make decisions about day to day care but, in relation to important decisions about the child's upbringing, must refer back to the local authority. This can seem quite onerous for a relative or friend caring for a child as they have little autonomy, but it reflects the fact that in such an arrangement they do not have parental responsibility for the child.

### iv) Decisions and plans for looked after children

The child's needs, and how they will be met, should be set out in the child's care and placement plans. The placement plan should specifically include details of contact arrangements including with parents, grandparents and the child's other siblings,

80 s.14F (1) s.24 (1)A Children Act 1989 and Regulation 22 Special Guardianship Regulations 2005

81 Regulation 11 SGR

82 Regulation 12-16 SG

83 s.22(1) Children Act 1989

84 Reg 15-20 Care Planning, Placement and Review Regulations 2010

85 s. 22C(2),(3)&(4) Children Act 1989. Following current case law, if a child was to live with a parent etc under these arrangements, they would not longer be 'looked after' unless they were the subject of a care order or interim care order - see GC v LD, DD, RBK, LCC [2009] EWHC 1942 (Fam) for review of case law on this point

86 s22C (5)(6) & (7) Children Act 1989

87 Reg 3 Fostering Services Regulations 2011

88 Reg 24 Care Planning, Placement and Review regulations 2010

89 Sched 4 Care Planning, Placement and Review regulations 2010

90 Ibid para 5.5

91 Again, this assessment is in accordance with the Fostering Services Regulations 2011 and the new National Minimum Standards for foster care (2011).



the financial arrangements for the placement and any delegated authority the carer has been given; for example they may be given specific authority to agree to a child staying overnight with a friend without having to refer back to the social worker. If the child is accommodated the child's care plan must be agreed with a parent or someone with parental responsibility or the last person caring for the child or the young person themselves if aged 16 or over<sup>92</sup>. However if they are in care under a court order the local authority should consult with parents/ others with parental responsibility but they do not need their agreement to the plan.

#### **v) Support for looked after children**

In terms of support, family and friends foster carers have the same right to financial and other support as unrelated foster carers although there is discretion as to how much is paid, subject to the minimum allowances for fostered children in England<sup>93</sup>. This is confirmed by the Manchester case<sup>94</sup> in which Munby J held that it is unlawful to discriminate against family and friends foster carers by paying them a lesser amount as a fostering allowance than unrelated foster carers.

#### **vi) Support for further and higher education**

A young person who is looked after has a right to a mandatory grant of £1200 per year for further education (i.e. pre degree level at sixth form college or further education college) and, provided they fall into one of the categories outlined in the Children (Leaving Care) Act 2000, they also have a right support at university, including vacation accommodation and a higher education bursary of £2000<sup>95</sup>.

## **2.6 Conclusion**

The vast majority of children in family and friends care are not looked after, hence these family and friends foster care placements represent only a small minority of placements of looked after children<sup>96</sup>. However these new legal requirements regarding placement of looked after children with family and friends foster carers in preference to unrelated carers combined with government guidance<sup>97</sup> to local authorities to consider wider family options before issuing care proceedings suggests that such placements are likely to increase in the future.

92 Reg 4 Care Planning, Placement and Review regulations 2010

93 s22B and 22C(10) Children Act 1989

94 The Queen on the Application of L and others –v- Manchester City Council; The Queen on the Application of R and another –v- Manchester City Council [2002] 1 FLR 43]

95 For further information see FRG advice sheet Support for relatives and friends caring for someone else's child and Support for young people leaving the care system <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

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

97 DfES, Vol 1 Court Orders, Children Act 1989 Regulations and Guidance 1989 Chapter 3 <http://www.justice.gov.uk/guidance/careproceedings.htm>

### 3. Survey Responses

#### 3.1 Local authorities' response to the survey

In October 2011, Family Rights Group wrote to all 152 English local authorities under the Freedom of Information Act, asking them to provide either their family and friends care policy, which should have been in place by 30th September 2011, or a link to its location on the council's website. We then followed this up in January and early February if they hadn't given a complete response or if they had informed us that the policy was still to be published.

**Table 3-1 Response to FOI by region**

	Local authorities that responded to FOI	% of total authorities
North East	13	100%
North West	19	86%
Yorks & Hum	15	100%
E Midlands	7	78%
West Midlands	12	86%
East of England	11	100%
London	30	91%
South East	18	95%
South West	16	100%
Total LA	141	93%

This data shows that 93% of English local authorities responded to our Freedom of Information request and provided some information, in the main to inform us of

- i) the contact details of the senior manager with responsibility for family and friends care in their area and
- ii) when the policy would be published or a link to the publication.

In a few cases, the local authority refused to provide this information. One withheld the name of the responsible manager under s40(2) FOIA 2000<sup>98</sup>. We will be taking this further since it appears to be a complete breach of spirit of the Act and the Statutory Guidance on Family and Friends Care.

#### 3.2 Local authorities which have published family and friends care policies

**Table 3-2 Does the local authority have a published family and friends care policy? Analysis of all local authorities by region**

Does local authority have a published policy?	Yes	No	% that have a pub. policy
North East	8	5	62%
North West	7	15	32%
Yorks & Hum	6	9	40%
E Midlands	5	4	56%
West Midlands	6	8	43%
East of England	7	4	64%
London	20	13	61%
South East	15	4	79%
South West	10	6	63%
Total	84	68	55%

Responses revealed that the best performing region were authorities in the South East, the worst were in the North West. Some of those which stated they had published a policy acknowledged that it was still in draft. But 45% of English local authorities still do not have a published policy, 5 months after the deadline set in the statutory guidance.

In order to check which authorities have a published policy, see Family Rights Group website <http://www.frg.org.uk/involving-families/family-and-friends-carers/local-policies-and-contacts>. This list will continue to be kept up to date.

<sup>98</sup> This sets out exemptions to providing information under the FOI Act where the information requested is personal information and provision of the information would contravene data protection provisions.

**Table 3-3 Authorities without a policy – whether date has been given for publication, by region**

Local authorities who have not published a policy	Policy not pub but waiting for approval/ date set for pub	Policy being drafted & an approx date for pub given	Policy being drafted - no date for pub given	No information about policy
North East	1	2	2	
North West	4	4	5	2
Yorks & Hum	2	5	2	
E Midlands			1	3
West Midlands	3	2	1	2
East of England		2	2	
London	2	4	4	3
South East	1		1	2
South West	2	2	1	1
Total	15	21	19	13

Of the 45% of authorities that do not yet have a published a policy, 15 (i.e. 22%) had drafted a policy which was going through the local authority approval process and/or have set a date for publication. A further 21 (31%) have given an estimated date when a policy would be published, which ranged from the end of March to the Summer months. 19 (i.e. 28%) stated they were drafting a policy but had set no publication date and a further 13 (19%) provided no information even on the drafting.

### 3.3 Contact information for senior responsible manager in the local authority

**Table 3-4 Contact information provided for the senior responsible manager in the local authority, by region**

	Contact details provided		% who had provided details
	Yes	No	
North East	12	1	92%
North West	17	5	77%
Yorks & Hum	13	2	87%
E Midlands	6	3	67%
West Midlands	11	3	79%
East of England	11	0	100%
London	29	4	88%
South East	18	1	95%
South West	16	0	100%
	133	19	88%

In accordance with the expectations of the statutory guidance, this data shows that a large majority (88%) of local authorities provided contact details for their lead manager with responsibility for family and friends care including their job title and telephone or email address. In some cases key information, such as the name or job title and a phone number, were missing. However, it is worth noting that most, although by no means all, were the senior manager in the authority with lead responsibility for looked after children.

This contact information is published on the Family Rights Group website and will be kept updated – see <http://www.frg.org.uk/involving-families/family-and-friends-carers/local-policies-and-contacts>.

#### Discussion:

It is welcome that a large majority of local authorities responded to our FOI request and also provided us with contact details of their senior officer responsible for family and friends care. However the fact that the majority of such officers are located in looked after teams means that it may continue to be difficult for those *outside* the looked after system to have their needs recognised and addressed.<sup>99</sup>

It is also encouraging that the majority of local authorities (55%) have a local family and friends care policy even if some are still in draft form. However, we are very concerned that a large minority of authorities (45%) do not have a policy. Whilst it is clearly important that local authorities consider, consult and reflect on the substance of

<sup>99</sup> Hunt J and Waterhouse S (2012) *Understanding family and friends care: the relationship between need, support and legal status* (FRG) found that it is often those outside the looked after system who struggle the most to have their needs recognised and addressed.

## 4. Development of local policies: analysis

their policies and may have considered it important to take time to get it right, nevertheless the absence of a published policy means that

- i) practitioners are likely to be unclear about what help they can offer family and friends carers. This is likely to result in continued wide variations in practice both within and between local authorities; and
- ii) existing and potential family and friends carers have no means of finding out what help they may or may not be able to receive from the local authority in bringing up children, whom research has shown to often have multiple difficulties and needs and who might otherwise be in unrelated care.

### 4.1 Policies selected for analysis

As stated earlier, we wrote in October 2011 to all 152 English local authorities, asking them to provide either their family and friends care policy, which should have been in place by 30th September 2011, or a link to its location on the council's website. By our cut-off date of mid February 2012 for detailed policy analysis, we had received around 60 policies<sup>100</sup>. However, a number of these were in draft format. We decided to include draft policies in our analysis only if they were being made publicly available. Due to capacity and late date of some of the responses, we were able to eventually analyse 52 of the policies

Out of the 52 policies analysed, 12 were in draft and publicly available, with only one of those giving a date when it was anticipated the policy would be finalised.

**Table 4-1: Policies analysed by region**

Local authorities' policies analysed by region	
North East	5
North West	6
Yorks & Hum	3
E Midlands	3
West Midlands	2
East of England	4
London	15
South East	8
South West	6
Total	52

Policies from authorities in all English regions were analysed

### 4.2 Consultation and needs assessment

A key part of the requirement that local authorities have a family and friends care policy is that it should not be 'one size fits all'. The policies are supposed to be responsive to the specific needs of family and friends carers in the council's local area. In order to achieve this, the Guidance states that the policy should be supported by good demographic and needs data, developed in 'collaboration with local partners' and that local authorities 'must consult children and young people, family and friends carers and parents as appropriate in drawing up their policies, and set out how policies have been informed by their views.'<sup>101</sup>

<sup>100</sup> In order to ensure the report is as up to date as possible, we included in the overall figures for published policies received up to mid March 2012. However, we could only analyse in detail those received before mid February 2012

<sup>101</sup> DfE (2011) Ibid, para 4.1-2 and para 4.8

**Table 4-2: Is the policy supported by good demographic and needs data?**

Does the policy state whether it is 'supported by good demographic and needs data'?	Frequency	Percent
Yes	7	13%
Partly	6	12%
No	39	75%
Total	52	100%

**Table 4-3: Is the policy produced in collaboration with local partners?**

The policy is supposed to be produced 'in collaboration with local partners'. Does it specify whether this has happened?	Frequency	Percent
Yes	7	13%
Partly	7	13%
No	38	73%
Total	52	100%

**Table 4-4: Is the evidence based upon consultation with children, carers or parents?**

Does the evidence base for the policy include:	Yes	Partly	No
Consultation with children and young people	10 (19%)	7 (13%)	35 (67%)
Consultation with family and friends carers	10 (19%)	8 (15%)	34 (65%)
Consultation with parents	7 (13%)	4 (8%)	41 (79%)

Tables 4-2 to 4-4 show the disappointingly small number of policies which describe using local information as a basis for the content:

- around three quarters of policies do not state they have sought local third party information, either by drawing upon local demographic and needs data or through collaboration with local partner agencies.
- two thirds of policies did not describe consultation with children and young people or family and friends carers, and four out of five did not describe consultation with children's parents.

## Discussion:

The analysis of 2001 census<sup>102</sup> revealed significant variations in the number of children in family and friends care across localities, and also differences in terms of age profile and ethnicity of children (e.g. one in 11 Black African boys in England aged 15-17 were in kinship care). Local authorities therefore need to understand the children in kin care in order to ensure their policy and services are tailored to local circumstances and resources are prioritised accordingly.

The requirement in guidance that local authorities should produce a policy by the end of September 2011 was a tough expectation on local authorities both in terms of the timescale which they needed to work to and also because of the harsh economic and financial climate in which they are operating. Nevertheless the guidance clearly states that policies should be responsive to local need, and sets out how local authorities could go about establishing local needs.

However, few seem to have embraced this or engaged the people most affected by the policy: only two local authorities stated they were going to involve carers in updating their policies, otherwise the overall picture is one of a very disappointing lack of engagement with carers when it came to drawing up these policies.

## 4.3 Values and principles

The section of the statutory guidance dealing with values, principles and objectives begins with a very clear statement about what this should mean:

*"Local families and friends care policies should be based on a clearly stated set of values and principles. The principles underlying the 1989 Act provide a sound foundation for this. The key principle is that children should be enabled to live within their families unless this is not consistent with their welfare."*<sup>103</sup>

Despite this clear statement, the majority of policies analysed do not refer to the 1989 Children Act as the following data shows.

<sup>102</sup> Nandy, Selwyn, Farmer and Vaisey (2011) *Spotlight on Kinship Care: Using Census microdata to examine the nature and extent of kinship care in the UK at the turn of the Twentieth century* (Bristol) Bristol University

<sup>103</sup> DfE (2011) *Ibid*, para 4.4

**Table 4-5: Do the policies' values and principles refer to the 1989 Children Act?**

Do the values and principles refer to the 1989 Children Act?	Frequency	Percent
Yes	15	29%
Partly	4	8%
No	33	63%
Total	52	100%

**Table 4-6 Do the policies include the key principle that children should be enabled to live within their families unless this is not consistent with their welfare?**

Is there a key principle that children should be enabled to live with their families unless this is not consistent with their welfare?	Frequency	Percent
Yes	28	54%
No	9	17%
Mentioned but not key principle	15	29%
Total	52	100%

Despite not referring to the Children Act, the majority of policies include the principle that children should be enabled to live with their families, as long as this is consistent with their welfare.

**Table 4-7: Does the policy have a stated principle that support should be based on the child's need rather than their legal status?**

Is there a stated principle that support should be based on the needs of the child rather than the child's legal status?	Frequency	Percent
Yes	24	46%
Partly	6	12%
No	22	42%
Total	52	100%

It is encouraging that more than half of the authorities' policies analysed do reflect, or partly reflect, the principle that the child's needs rather than legal status should determine the support that the authorities provide. However, nearly as many authorities didn't include this stated principle as did.

**Table 4-8: Does the policy include the principle that the local authority should provide support to ensure that a child does not become or remain looked after under S20 for any longer than is needed?**

Is there a principle that the local authority should provide support to ensure that children do not become or remain looked after under s20 for any longer than is needed?	Frequency	Percent
Yes	19	37%
Partly	3	6%
No	30	58%
Total	52	100%

**Table 4-9: Does the policy include a principle that children's wishes and feelings should be taken into account?**

Is there a principle that children should be treated as active participants whose wishes and feelings should be taken into account?	Frequency	Percent
Yes	22	42%
Partly	8	15%
No	22	42%
Total	52	100%

Tables 4-8 and 4-9 further illustrate the extent to which core principles laid out in the Government guidance are or are not being incorporated into local policies. 42% did not feature the principle that children should be treated as active participants whose wishes and feelings should be taken into account, and 58% failed to include the principle that children should not become or remain looked after under section 20 (i.e. accommodated voluntarily in the care system) for any longer than is necessary.



### Good Practice Illustration – Box 1

From Principles and Values Underpinning the Policy

- The aim should always be to assist families in resolving their problems which would enable them to be reunited or to be found permanent stable placements with family and friends or alternative placements close to home
- If children have to live apart from their families, both they, their parents and carers will be given adequate information and support to enable them to make an informed choice about the most appropriate form of care
- That support within family and friends arrangements will be based on the assessed needs of the child rather than legal status
- Children are active participants and that their wishes and feelings should be taken into account in all relevant processes when adults are trying to solve problems and make decisions about them
- Children, parents, family members and family friends should be involved in decision making and planning about child placements as collaboratively as possible and the local authority will provide support to facilitate this as required

*London Borough of Redbridge, Family and Friends Care Policy DRAFT*

### Discussion:

It is encouraging that the majority of policies include the principle that children should be enabled to live with their families, as long as this is consistent with their welfare, and were scored positively as being written in plain in English. However, it is of great concern that fewer than half the policies fully reflect the principle that the child's needs rather than legal status should determine the support that the authorities provide and that almost half did not reflect this principle at all<sup>104</sup>

Carers and children often have little control over the legal status they end up with, and yet legal status can have an enormous bearing on their ability to get help to raise these children. As Chapter 2 describes, the only legal status that confers a legal right to specific types of support services and a particular level of financial support, is that of family and friends foster carers for a looked after child. Other legal arrangements, such as residence order, special guardianship, or a private arrangement, may be supported by the local authority, but this is at the authority's discretion.

Implementing the principle that the child's needs rather than legal status should determine the support provided, is key to promoting children's welfare and maximising outcomes for many of the most vulnerable. However, given that nearly as many authorities didn't include this stated principle as did, there is clearly significant work to be done to ensure this principle universally informs local authority practice, in line with the statutory guidance.

It is also worrying that nearly half of the policies (42%) did not mention the important principle that children's wishes and feelings should be taken into account, and more than half (58%) failed to state that children should not be looked after under section 20 accommodation for any longer than is necessary.

**Table 4-10: How accessible is the principle section of the policy?**

Would it be possible for a reader with no special background in law or social work to understand what this section of the policy is saying?	Frequency	Percent
3 (uses plain English)	31	67%
2 (some jargon)	12	26%
1 (mainly jargon/technical language)	3	7%
Total	46	100%

Of the local authorities which either included a section on values, principles and objectives, or at least covered some of these principles at some point in their policy, two thirds (67%) were scored 3 by the analysts as being clearly written in plain English. Only three were scored 1, i.e. written in difficult language or jargon.

104 DfE (2011) Ibid para 4.6

#### 4.4 Evidence base

The statutory guidance states that *'Policies should be based on evidence of what works in supporting family and friends carers to meet children's needs, and knowledge of the services which carers and children want to be available to them'*<sup>105</sup> and also sets out key messages from research into family and friends care. Yet:

- Only three of the 52 policies stated that the local authority's own existing data on family and friends care in their area, such as numbers of these carers being paid different types of allowance, was used to inform the policy. It might have been expected that more use would have been made of this sort of information, which is already held by the councils.
- Only ten policies made any sort of statement about having any sort of evidence base underlying the policy.
- Eleven policies make reference to the messages about family and friends care from research.

The following data shows that the majority of policies (31/52) did not deal at all with the evidence base, and only seven dealt with it fully, including three which analysts considered particularly good examples. For example, Sunderland's policy was notable in that it draws on the findings of a piece of action research conducted locally by family and friends carers:

**Table 4-11: How well does the policy reflect the evidence base?**

Rating for section of the policy that deals with the evidence base of what works in supporting family and friends carers to meet children's needs	Frequency	Percent
4 (wholly covered and a partic good example)	3	6%
3 (wholly covered)	4	8%
2 (partially covered)	14	27%
1 (not covered at all)	31	60%
Total	52	100%

<sup>105</sup> DfE (2011) Ibid para 4.8

<sup>106</sup> Robson, S and Conqueror, K. (2011) *Breaking the vicious circle, addressing the barriers and difficulties faced by grandparent kinship carers in Sunderland where the birth parents are involved in substance misuse.*

#### Good Practice Illustration – Box 2

##### Drawing on evidence

Research carried out in Sunderland into the issues faced by grandparent kinship carers where the birth parents are involved in substance misuse found that there are currently 192 kinship carers in receipt of a means-tested allowance from Sunderland City Council's Children's Social Work Service (Conqueror, K. and Robson, S., 2011)<sup>106</sup>. These payments relate to Special Guardianship Orders (73), Residence Orders (102) and Kinship Foster Carers (17).

In applying the figures set out in the previous paragraph to the prevalence rates indicated by the University of Bristol, and taking into account the population cohort of 65,800 for those aged 0-19 years (ONS 2005 mid-year estimates), the number of children and young people living with family and friends in Sunderland is potentially 855. However, by applying a prevalence rate of 15 children in every 1000 to the population cohort, this figure increases to 987. The discrepancy highlights the challenges associated with trying to establish the true extent of family and friends care in Sunderland; however, the figures do suggest that only a small proportion of the children and their carers are formally known to the Council in this capacity.

Further challenges are around the lack of information about the scale and issues of family and friends care within Sunderland's ethnic minority communities. This will need to be addressed and will be included as an action in the delivery plan to establish this information as part of the implementation of the policy.

From *Sunderland City Council Family and Friends Care Policy* which goes on to describe how consultations with carers and children and young people have already been carried out, and provides plans for further consultations.

The guidance also requires policies to state how the views of children, carers and parents have informed their contents. However, our analysis revealed a widespread failure to consult service users about the policies:



- a large majority of policies made no reference to consultation with children (67%), carers (65%) or parents (79%), despite this being expected as part of the process of developing policies.
- Only six policies made any reference to how this consultation had been carried out. Although some of these stated quite clearly what they had done to consult (*‘Through interviews with family and friends carers and their families’*), with others it was hard to be clear whether interested parties had been specifically consulted and what exactly this had involved. For example, a statement that *‘Child in care councils where children are consulted on a range of issues. A yearly updated participation strategy as well as views of Special guardians and those holding RO’s are obtained through the annual review process’* did not make it clear whether any of these processes had specifically asked children and carers about what they thought needed to be included in the family and friends care policy.

#### Discussion:

This widespread lack of an evidence base and failure to consult with relevant family members suggests that many of the policies will not adequately address the needs of the service users they are designed to help, because their needs have not informed policy development. It is hoped that these authorities will ensure that is redressed when these policies are revised in the future, and that authorities who still are drafting their policies will reflect this in their approach.

## 4.5 Management accountability

The statutory guidance says that the Director of Children’s Services should identify a senior manager to hold overall responsibility for the family and friends care policy, ensuring that it meets the statutory requirements, and is responsive to the identified needs of children and carers.<sup>107</sup>

Whilst 88% of authorities provided contact details for the lead officer as described in Chapter 3, few policies state anything about the manager’s duties:

- 43 of the 52 policies (83%) make no mention, in whole or in part, of the manager’s duty to ensure that staff have the skills and knowledge to work with family and friends carers, and to ensure that the policy is publicised with carers and local partner agencies
- 42 policies of the 52 (81%) do not set out a roadmap for how the manager with responsibility for the policy will ensure its implementation.

**Table 4-12: How well does the policy deal with management accountability?**

Rating for section of the policy that deals with management accountability?	Frequency	Percent
4 (wholly covered and a partic good example)	1	2%
3 (wholly covered)	3	6%
2 (partially covered)	23	44%
1 (not covered at all)	25	48%
Total	52	100%

Overall, analysts felt that the policies did not give a good account of management accountability, with only four policies considered to be comprehensive or outstanding, and almost half (25) not dealing with the matter at all.

However, Bristol’s policy was notable for making a number of clear statements about specific actions that the responsible manager would carry out to monitor the implementation of the policy and ensure staff and partners are informed about the needs of family and friends carers.

107 DfE (2011) Ibid para 4.9

### Good Practice Illustration – Box 3

#### Management

An area services manager has responsibility for this policy to ensure that it is publicised, to monitor its implementation and make sure relevant staff are trained appropriately.

In Bristol, there are carers receiving special guardianship, residence order, private fostering, adoption and children in care support and services. The number of these carers and the children they are caring for is collated regularly and used to inform and plan policies, priorities and the delivery of services to meet their needs.

A series of workshops, e-learning tools and information is provided to council staff to ensure the policy is applied across the service.

Local partners will be made aware of their responsibilities towards children living in family and friends care and to being proactive in meeting those needs.

A quality assurance group, including an area team manager, will be set up and meet regularly, to monitor the implementation of this policy.

We will publicise this policy to people considering becoming a family and friends carer so they are aware of its content, and are clear about how to contact the council and other agencies for further information. Information about contacting a social worker is in Appendix Two.

Social workers who implement the policy will have appropriate training and understand the issues faced by family and friends carers and their obligations, powers and responsibilities, including the content of this policy, and be competent in this area of work.

*From Bristol City Council Family and Friends Care Policy*

#### Discussion:

It is welcome that the contact details are available for a large majority of lead officers in English Authorities and, as mentioned in Chapter 3, readers can find these details on FRG website: <http://www.frg.org.uk/involving-families/family-and-friends-carers/local-policies-and-contacts>. However, the lack of detail about management accountability and absence of dedicated kinship workers in the majority of local authorities suggests that this lead officer may have little time, influence and resources at their disposal to really implement an effective family and friends care policy to the detriment of children and carers in their area.

Our analysis also shows that carers who want to find out what structures are in place to support them are also likely to be disappointed:

- Only 13 local authorities (one in four) state they will support them through a team
- Only six state they will support them through a designated worker
- Only seven policies provide any contact details of the kinship worker or team:
  - Five provide a phone number for calling the kinship worker or team
  - Three provide an email address
  - Three provide a postal address.

## 5. Analysis of local policies: Information about legal status and support available

The statutory guidance on Family and Friends Care (2011) says that each Local Authority's local policy should set out the relevant law<sup>108</sup> in an accessible way. This is to make sure that parents and family and friends carers can make informed choices. The legal information should include:

- an explanation of the authority's powers and duties in relation to children in need and looked after children, and the effects of a residence order, special guardianship order or adoption order;
- information about the meaning and implications of different legal situations, the rights of carers and of the children's parents; and
- the nature of decisions which family and friends carers will be able to make in relation to the child.

### 5.1 Different legal arrangements

We began by examining the extent to which the 52 policies analysed covered the different legal arrangements for family and friends.

**Table 5-1: Does the policy cover the range of legal arrangements for family and friends care, including the local authority's powers, duties and responsibilities, and the effect of the legal arrangement or order?**

Does the policy cover the range of legal arrangements for family and friends placements, including the local authority's powers, duties and responsibilities, and the effect of the legal arrangement or order?	Yes	Partly	No
Informal (private) arrangement with a relative	36 (69%)	9 (17%)	7 (13%)
Private fostering	39 (75%)	10 (19%)	3 (6%)
Looked after child with family and friends foster carers	39 (75%)	11 (21%)	2 (4%)
Residence Order	34 (65%)	9 (17%)	9 (17%)
Special Guardianship Order	34 (65%)	11 (21%)	7 (13%)
Adoption	26 (50%)	8 (15%)	18 (35%)

Table 5-1 compares the extent to which the different legal arrangements are covered within the policies.

This data shows that:

- at least two thirds of policies were judged to cover fully the legal arrangements that family and friends carers are most likely to encounter;
- nine of the policies provided a link or a reference to a separate policy that covers the particular legal status under consideration. As many local authorities may have had existing policies covering private fostering, adoption, special guardianship or residence orders, it may well be that this would prove to be just as informative for carers, although without the convenience of having all the information in one place;
- the two legal arrangements which are the most likely to be covered in full (75%) are kinship fostering of a looked after child and private fostering. However, almost as many (69%) of policies were judged to deal fully with family and friends carers raising a child as an informal private arrangement. 65% dealt fully with residence orders and special guardianship orders;
- the legal arrangement which was least likely to be covered at all in the policies was adoption. Family and friends carers rarely adopt the child they are raising because of the complexities that can lead to within the family (e.g. a maternal grandparent adopting her own grandchild would then be the legal parent to the child and to the child's mother). Special guardianship is often a preferred option for making a permanent arrangement for the child. However, courts will make a decision about which order to make on the individual merits of each case, according to how the child's welfare can best be promoted. Adoption may be considered the best option for children being raised by family and friends carers in some circumstances, and a comprehensive family and friends care policy ought to include it in the legal section.

### 5.2 The meaning and implications of different legal statuses

The policies were also analysed for whether they fully explained the 'meaning and implication' of the different legal orders to help carers to make an informed choice about what order they should consider applying for.

<sup>108</sup> DfE (2011) *ibid* para 4.13

**Table 5-2: Explanation of the meaning and implication of different legal arrangements**

Does the policy explain the meaning and implication of different legal situations	Frequency	Percent
Yes	21	40%
Partly	24	46%
No	7	14%
Total	52	100%

Table 5-2 shows that while 86% of the policies did offer some level of explanation about the different legal situations, fewer than half of those actually did so fully.

### 5.3 Information on service users' rights and ability to have their voices heard:

One of the main aims of the statutory guidance is to ensure children and their families have the information they need to work together with local authorities to do what is best for the children concerned. Many family and friends carers will not have dealt with Children's Services before, and will not know their rights, or how to make sure their voices are heard. Therefore although this is not a specific requirement of the guidance, we were keen to consider the extent to which the policies addressed this.

**Table 5-3: Information about the rights and voice of service users in family and friends care arrangements**

Does this section of the policy provide information about:	Yes	Partly	No
the rights and voice of children	9 (17%)	15 (29%)	28 (54%)
the rights and voice of carers	8 (15%)	13 (25%)	31 (60%)
the rights and voice of children's parents	8 (15%)	11 (21%)	33 (64%)

This data shows that more than half of the policies did not consider the rights of these parties nor how children, carers and parents could influence decisions. By contrast, eight policies did so fully.

### 5.4 Decision-making by family and friends carers: the implications of different legal orders.

The statutory guidance states that local policies should provide information about the 'nature of decisions which family and friends carers will be able to make in relation to the child'<sup>109</sup>. Table 5-4 shows the results of our enquiry into this.

**Table 5-4: Advice on implications of legal orders for decision-making**

Is advice and guidance 'available to family and friends carers regarding the respective implications of orders which give them parental responsibility, so that they fully understand the implications of applying for such an order'?	Frequency	Percent
Yes	19	37%
Partly	11	21%
No	22	42%
Total	52	100%

Over half of the policies give some information to carers about the implications of legal orders which give the carer parental responsibility for the child. But only 37% of policies provide full information, with another 21% providing partial information.

The 42% which fail to provide any information is concerning. Family and friends carers should be able to use the authority's policy to help them make an informed decision about whether to apply for a particular legal order to give the child permanence. Key to making such an informed decision is understanding the different decision-making powers that each order gives.

### 5.5 Emergency placements:

At the same time as the family and friends care statutory guidance for local authorities came into force, new guidance and regulations also came into force, changing the procedures local authorities should follow to place a child with family and friends carers in an emergency or because of an urgent need<sup>110</sup>. This is discussed further in chapter 2.

Many of the placements that are made with family and friends carers take place in emergencies, as a result of a crisis in the parents' home or

109 DfE (2011) Ibid, para 4.13

110 Reg 24 Care Planning, Placement and Case Review Regulations 2010 (CPPCR)

other urgent need. For this reason we felt it was important that the procedures for this sort of placement should be fully explained in the policy – to help carers who were being approached to fully understand what should happen and the implications of taking on the care of a child in an emergency.

**Table 5-5: Explanation of legal procedures and implications of an emergency placement with a family and friends carer**

Does the policy describe the procedures to be followed if a child has to be placed with a family / friends carer urgently or in an emergency (reg 24)?	Frequency	Percent
Yes	28	54%
Partly	9	17%
No	15	29%
Total	52	100%

Table 5-5 shows that:

- a majority of policies (54%) gave a full explanation of the procedures to be followed when making emergency placements but
- 15 of the policies being analysed did not mention emergency placements at all.

Worryingly, at least one policy (Devon) was clearly based on obsolete regulations. This policy referred to Regulation 38 of the Fostering Services Regulations 2002 as providing the regulatory framework for emergency placements, and gave a mistaken timescale (six weeks instead of sixteen) for the duration of such placements.

## 5.6 Legal status of emergency placements

Regulation 24 of the Care Planning Placement and Case Review Regulations 2010 is clear that when a looked after child is placed with relatives or friends, then, subject to gathering all the information required by schedule 4 and this being satisfactory, the carers are to be given temporary approval for 16 weeks as the child's foster carers, to allow time for a full fostering assessment to take place.

Moreover, case law has established that if the child is not already looked after, and the local authority plays a major role in making the

placement, the child will be treated as looked after (unless the local authority agrees otherwise with the carers at the time of making the placement and the necessary consent to s.20 accommodation or a care or emergency protection order is not forthcoming).

The carers then become foster carers, are entitled to be paid a financial allowance, and they and the children they are raising are entitled to support from the local authority<sup>111</sup>.

We therefore analysed the policies to find out how the local authorities regarded the child's legal status in emergency placements, and how consistent the policies were with case law.

**Table 5-6: Does the policy describe the circumstances in which the child will be considered as 'looked after' (i.e. in care) in an emergency placement?**

Does the policy describe the circumstances in which, for such an emergency / urgent placement, the child would be considered either looked after or in a private arrangement?	Frequency	Percent
Yes	13	25%
Partly	4	8%
No	35	67%
Total	52	100.0%

Table 5-6 shows that only one in four policies gives a full account of when the children in emergency placements would be considered looked after, and when it would be considered a private arrangement between the carers and the parents. Two thirds do not mention this important distinction.

**Table 5-7: Is the policy consistent with case law?**

If yes, is the policy consistent with the Southwark and Kent judgments?	Frequency	Percent
Yes	8	15%
Partly	9	17%
No	0	0%
N/A	35	67%
Total	52	100%

<sup>111</sup> *Southwark LBC v D* [2007] EWCA Civ 182; *R (SA) v Kent County Council* [2011] EWCA Civ 1303



This data shows that about half of those policies which make the distinction about the nature of the emergency placement (8/17) do so in line with case law, while others were unclear or ambiguous on the point. For example, Wandsworth's policy describes how the council may be involved in facilitating a private arrangement between the carers and the parents, without giving any account of how there might be a legal requirement for children to be considered to be looked after if the local authority has played a major role in arranging for the child to be placed, as outlined in chapter 2.

### 5.7 Family and friends foster carers

The section of the statutory guidance covering family and friends foster carers begins with the following statement:

*'Families and friends policies should include information about the local authority's powers and duties including circumstances in which a child may become accommodated by the local authority or in which care proceedings may be instigated, and how and by whom such decisions are made. Informal family and friends carers will need to feel confident that if they come forward to ask for support their views will be listened to and the child's needs will be appropriately assessed. They should know how they will be involved in this process and what framework will be used to assess that the child or young person may need to become looked after by the local authority.'*<sup>112</sup>

In doing so it highlights the importance of transparency in decision making, especially in relation to as important and significant a step as potentially removing a child from their parents.

**Table 5-8: Does the policy address the local authorities' powers and duties when a child may become 'looked after' in the care of the local authority?**

Does the policy include details about:	Yes	Partly	No
the circumstances in which a child may become accommodated (Section 20)	16 (31%)	13 (25%)	23 (44%)
the circumstances in which care proceedings may be instigated	13 (25%)	4 (8%)	34 (67%)
how such decisions are made	7 (14%)	7 (14%)	38 (73%)
when such decisions are made	5 (10%)	8 (15%)	39 (75%)
Does the policy spell out that:	Yes	Partly	No
the views of informal family and friends carers will be listened to	7 (14%)	14 (26%)	31 (60%)
the child's needs will be appropriately assessed	21 (40%)	12 (23%)	19 (37%)
how carers and children will be involved in the process	6 (12%)	21 (40%)	25 (48%)
what framework will be used to assess that the child or young person needs to become looked after	9 (17%)	7 (14%)	36 (70%)

A majority of the policies do make some reference to the circumstances in which a child may become accommodated, i.e. voluntarily taken into local authority care. Unfortunately only a third provide any information about the circumstances in which care proceedings may be instigated.

Very few policies describe in detail how carers and children will be involved in the process, despite the guidance specifying that this ought to be stated in the policies. There is however more likely to be a statement that the child's needs will be appropriately assessed, although the policies were not always clear about how. Nine policies referred to a 'child in need' assessment process, two referred to the common assessment framework, with one of these also referring to the possibility of a section 47 enquiry (an investigation of whether a child has been harmed). Thirty-six policies gave no account at all of what assessment process would be used.

<sup>112</sup> DfE (2011) Ibid para 4.43

## 5.8 Overall rating of legal section

**Table 5-9: Did the policy explain the relevant law?**

Rating for section explaining the relevant legal framework for family and friends carers?	Frequency	Percent
4 Wholly covered and a particularly good example	6	12%
3 Wholly covered	7	13%
2 Partly covered	37	71%
1 Not covered at all	2	4%
Total	52	100%

Tables 5-9 rates how well the policies explained the relevant law.

One in four (13) did provide full information about the law, with six of those being rated as particularly good examples. For example, the London Borough of Lewisham's policy includes a section headed *Different situations whereby children may be living with family and friends carers*, and proceeds to describe, in accessible language, all the different legal arrangements that might apply.

The majority (71%) provided some information but not enough. Worryingly, two policies effectively did not deal with the law for family and friends care at all. The policy supplied by Derbyshire was two pages long, and had no detailed legal information. The policy supplied by Milton Keynes dealt only with the procedures for making immediate placements with family and friends or connected persons<sup>113</sup>. It failed to deal with all the other possible legal statuses for these placements.

**Table 5-10: Was the legal section of the policy written clearly?**

Would it be possible for a reader with no special background in law or social work to understand what this section of the policy is saying?	Frequency	Percent
3 Plain English	22	45%
2 Some jargon	22	45%
1 Unreadable jargon	5	10%
Total	49	100%

45% of policies with a legal section (22) were judged to have been written in plain English, while 22 contained some jargon, but not enough to prevent them being understood. Five policies (one in ten) were judged to have been written in 'incomprehensible jargon', which is surely unacceptable in a policy that is intended for use as a tool by family and friends carers, to help them to make informed choices about legal arrangements.

### Discussion:

Family Rights Group's recent internet survey of family and friends carers<sup>114</sup> found that family and friends carers often felt that they were not in a position to make informed decisions about the right legal status for the child, and that instead they often felt pushed down a particular route by local authorities which resulted in the local authority having maximum discretion to avoid financing or supporting the child's placement. Carers often said they did not know where to go and did not fully understand the significance of getting independent advice early, and yet later on it was sometimes too late for re-negotiations with the local authority.

Despite the aspirations of the guidance that these policies should be a source of information for these carers, the data from this survey presents a mixed picture. The majority of policies provided some information about the key legal statuses, emergency placements and the nature of decisions which carers could make. However, there is also evidence that the rights and views of those affected are not adequately addressed and there is a substantial failure by some policies to take full account of and explain relevant case law. These omissions have key implications for the legal status of the child and their access to support. Unless policies improve in this respect many carers or potential carers are likely to remain confused and unaware of the legal implications of their arrangement, with potentially significant consequences for the child(ren) they are raising.

## 5.9 Information about support services

The statutory guidance for family and friends care acknowledges that these carers often struggle to obtain information which will help them in their caring role. The guidance therefore requires the local authority's to set out accessible information

<sup>113</sup> I.e placements made under regulation 24 of the Care Planning, Placement and Case Review Regulations (2010)

<sup>114</sup> Aziz, Roth and Lindley (2012) Ibid

about local services available to them<sup>115</sup>. We therefore analysed the policies to find out how much information is provided about local support services and how to access them.

**Table 5-11: Does the policy provide information about universal services?**

Does the policy provide information for carers about local resources / universal services to support children, eg early years provision, day care, out of school services, schools, colleges, health services, leisure facilities, youth support services, or any other local services?	Frequency	Percent
Yes	11	21%
Partly	12	23%
No	29	56%
Total	52	100%

Despite the strong emphasis that is placed in the statutory guidance on signposting family and friends carers to local universal support services,

- A majority of the policies analysed (56%) failed to do so.
- Among those which did provide this information, 11 were judged to have provided full information. Others provided limited information, such as one policy which stated that such information could be provided upon request, or another which listed youth clubs, nurseries, support groups, counselling services and special guardianship groups, without giving any names or contact details for these services.

**Good Practice Illustration – Box 4**

**Universal services**

Where families do ask for support, the local authority will respond to this positively. Each family is unique and different and an expert on themselves, therefore they need individual support to fit their circumstances.

From Royal Borough of Kensington and Chelsea  
*Support for Friends and Family Caring for Children in Need Guidance and Procedure*

**5.10 Information for partner agencies about family and friends carers**

The statutory guidance states that information should be provided to other partner agencies which deliver services, so that they will be aware of the challenges facing family and friends carers. The response to this guidance was very disappointing, with a large majority of policies indicating that little work has been done to ensure that partner agencies understand the difficulties and needs of family and friends carers. Only two policies address this fully.

However, where policies did include this information, the organisations mentioned as being provided with information about family and friends care included local contact centres, mediation services, support groups, benefits advice, education and health services, mental health services, therapeutic services, out of hours social workers, libraries and family group conferences. These are all good examples of other organisations that could be helped to provide a better service to family and friends carers if they were given information.

**Good Practice Illustration – Box 5**

**Local services**

All children are entitled to a range of universal services such as education and health, and any local provision such as leisure services and youth support. The West Sussex County Council website has a lot of information about the services outlined below which are run by or for the county council. The local district or borough council will be able to provide information about services they make available to all children and young people in the area. Libraries are also a good source of information and run story sessions for pre-school children.

From *West Sussex Family and Friends Care Policy*.  
The policy includes a section called *Advice on universal services and support* which provides an extensive list of local services for children that family and friends carers could use for the children they are raising.

The statutory guidance states that carers should be advised on how to access specialist services, such as Child & Adolescent Mental Health Services (CAMHS) or the Special Educational Needs (SEN) Service. Most policies made no mention at all of these two services: 33 made no reference to the SEN service, and 34 made no reference to CAMHS.

115 DFE (2011) Ibid para 4.15



## 5.11 Information about sources of independent advice

The statutory guidance suggests that the local policies should 'highlight the availability of advice from independent organisations'<sup>116</sup>. This is consistent with the findings of research being carried out by Joan Hunt in collaboration with Family Rights Group<sup>117</sup> which demonstrates how important it is to family and friends carers not to have the local authority as their only source of advice and information. Carers who managed to get independent advice had more information about the range of legal options open to them, and about their entitlement to support. We therefore examined policies to see how this issue was addressed.

**Table 5-12: Information about independent sources of advice for family and friends carers**

Does the policy inform carers about sources of independent advice, eg FRG, The Fostering Network, The Grandparents' Association, Grandparents Plus, etc?	Frequency	Percent
Yes	21	40%
Partly	2	4%
No	29	56%
Total	52	100%

A majority of policies analysed (56%) do not inform carers about sources of independent advice. However it was encouraging that a significant minority did provide extensive lists of the organisations that could advise carers. Apart from those listed on the table as examples, there was also information about specialist organisations dealing with drug issues (Adfam, Addaction), prisoners' families (PACT, Partners of Prisoners & Families), mediation (Family mediation helpline, National family mediation) and many other relevant topics.

Unfortunately fewer than one in five policies gave specific advice to carers with residence orders or special guardianship orders about how to seek support services. Since support to carers with these orders is at the local authority's discretion (and hence may not be provided unless the carers ask for it) it is disappointing that more policies do not give advice to these carers about how to seek support, which can be crucial to enabling carers to cope with their task.

## Discussion

With some notable exceptions, it is very disappointing that the majority of policies failed to provide any, or adequate, information for family and friends carers on access to support from universal services and CAMHS, failed to signpost them to much needed sources of independent advice to help them make informed choices, and failed to ensure that partner agencies which may deliver services to family and friends carers have an understanding of the difficulties they face. It would cost the local authority little to provide such information in their policies. It is therefore hoped that the lead officer for family and friends care and other specialist family and friends care teams and workers will be proactive, drawing on cited examples of best practice, to ensure these issues are addressed and that staff in a wide variety of organisations are well informed about family and friends carers' issues when these policies are revised or new policies finalised.

<sup>116</sup> DeF (2011) Ibid para 4.18

<sup>117</sup> Hunt, J. and Waterhouse, S. (2012) *Understanding family and friends care: the relationship between need, legal status and support Part 1: carers' experiences*

## 6. Financial support for family and friends carers: analysis of local policies

Research by Farmer and Moyers identified that 75% of family and friends carers who were involved with local authority services were living in poverty<sup>118</sup>. Family and friends carers who take on the responsibility for raising a child they are connected to often experience considerable financial hardship as a result of making this decision. Local authorities have considerable powers and some duties to assist family and friends carers financially, for example, family and friends foster carers raising a looked after child will be entitled to receive a full fostering allowance as discussed in chapter 2. However, for the vast majority of family and friends carers raising children outside the care system, financial support is discretionary and is therefore very patchy and in many cases non-existent.

Many of these carers have been forced to give up work<sup>119</sup> to take on the care of children, and are sometimes confused (as are sometimes officials) as to what benefits and allowances they can claim. That is why the statutory guidance states:

*'Family and friends policies should signpost local and other sources of information and advice, such as benefits advice services. In turn these services should be made aware of the particular difficulties which may face family and friends carers across the spectrum of circumstances, in order to provide a responsive service which recognises the key role they play in avoiding the need for children to become looked after.'*<sup>120</sup>

This Chapter considers how the 52 family and friends care policies analysed deal with financial support.

### 6.1 Benefits advice

**Table 6-1: Does the policy advise about benefits and allowances?**

Does the policy advise carers about state benefits and allowances they may be entitled to, e.g.	Yes	Partly	No	Total
- child benefit	13 (25%)	18 (35%)	21 (40%)	52 (100%)
- child tax credit	14 (27%)	16 (31%)	22 (42%)	52 (100%)
- how to apply for any discretionary financial support?	13 (25%)	8 (15%)	31 (60%)	52 (100%)

**Table 6-2: Does the policy signpost to specialist benefits advice?**

	Yes	Partly	No	Total
Does the policy signpost carers to local sources of information and advice about benefits and allowances, e.g. benefits advice services?	10 (19%)	9 (17%)	33 (63%)	52 (100%)
Is there anyone in the authority with specialist knowledge of benefits and allowances who can advise family and friends carers?	6 (12%)	3 (6%)	43 (83%)	52 (100%)
Does the policy describe how the local authority will make local benefits advice services aware of the difficulties which may face family and friends carers, in order to provide a responsive service?	5 (10%)	3 (6%)	44 (85%)	52 (100%)

A quarter of the policies examined provided full information about state benefits and allowances. However, three-fifths did not provide any information about how to apply for discretionary financial support from the local authority and other sources, including crisis loans or charitable grants.

10 policies provided good signposting information to get advice about benefits and financial help, unfortunately 63% provided no such information.

<sup>117</sup> Farmer, E. and Moyers, S. (2008) *Kinship Care: Fostering Effective Family and Friends Placements* London: Jessica Kingsley

<sup>118</sup> Aziz, Roth and Lindley (2012) *Ibid*

<sup>119</sup> DfE (2011) *Ibid* para 4.18

Also, only a very small number of policies (6) provided complete information about someone within the authority who has specialist benefits knowledge and would therefore be able to advise the carers. And even fewer policies (5) fully addressed how the local authority would make benefits advice services aware of the challenges faced by family and friends carers.

## 6.2 Children in need (Section 17) payments

The statutory guidance recognises that even where family and friends carers are receiving benefits they may be experiencing financial hardship, due to the additional costs of taking on the child. Some may need to receive financial support from the local authority as children in need, under section 17 of the 1989 Children Act. It also suggests circumstances in which carers may need one-off or regular payments under section 17 and that family and friends carers should be included in the authority's eligibility criteria for s.17 support<sup>120</sup>. We analysed the extent to which policies included the specific suggestions made by the guidance<sup>121</sup>.

**Table 6-3: Does the policy describe circumstances in respect of section 17 payments to children in need?**

Does the policy describe the circumstances in which payments in respect of children in need, under s17(6) of the 1989 Act, might be made? (see following)	Yes	Partly	No	Total
In lieu of lost wages if carers have to take unpaid time off work or a career break	4 (8%)	3 (6%)	45 (87%)	52 (100%)
School clothing	8 (15%)	9 (17%)	35 (67%)	52 (100%)
Bedroom furniture	7 (14%)	9 (17%)	36 (69%)	52 (100%)
Regular allowance	15 (28%)	12 (23%)	25 (48%)	52 (100%)
Other	12 (23%)	3 (6%)	37 (71%)	52 (100%)

Table 6-3 illustrates the extent to which some local authorities were reluctant to make any policy commitment to provide section 17 financial support to children in family and friends care arrangements who are assessed as being in need. However, about half of policies did make some reference to a regular allowance and twelve policies did make specific and creative suggestions for other ways of using section 17 money. These included the following:

- Temporary childminding or nursery costs<sup>122</sup>
- Deposit for larger accommodation
- Independent legal advice
- Start up equipment grant
- Emergency clothing
- Overseas holiday
- Various payments for placements overseas
- Assistance to purchase a computer for child's education needs
- Help with meeting special or complex health needs
- Subsistence or crisis payments for late arrival of benefits, or while claim is dealt with
- Enhanced payments following training

The statutory guidance is also very clear about the need for transparency when local authorities agree to pay family and friends carers an allowance from section 17 funds:

*'The local policy must identify how family and friends carers are made aware of the eligibility criteria and when means testing applies, how to apply for any such financial help, and how and when decisions are made about eligibility.'*<sup>123</sup>

<sup>120</sup> Ibid para 3.7

<sup>121</sup> Ibid para 4.21-23

<sup>122</sup> We would however, question why only temporary costs are covered

<sup>123</sup> DfE (2011) ibid para 4.23

20 policies (38%) partly or fully described eligibility for financial help under section 17 for a child in need.

17 policies (33%) partly or fully set out how carers could apply for section 17 children in need payments and their eligibility criteria. Unfortunately 35 (67%) did not.

Moreover, some of the policy statements on eligibility were obtuse or overly restrictive. For example, policies which state that these payments can be made *'when authorised'* or *'at discretion of local authority'* are of little help to a carer reading the policy to find out whether they might qualify for such help or not. This raises the question: how will discretion be exercised?

The guidance states:

*'Where financial support is offered, a written agreement should be drawn up detailing the level and duration of the support that is to be provided, and the mechanism for review, to ensure that all parties remain clear about the arrangements.'*<sup>124</sup>

**Table 6-4: Does the policy refer to there being a written agreement where financial support is provided?**

Does the policy state that where financial support is offered, there should be a written agreement detailing:	Yes	Partly	No
the level of support	16 (31%)	3 (6%)	33 (63%)
the duration of support	19 (36%)	3 (6%)	30 (58%)
the mechanism for review	8 (15%)	13 (25%)	31 (60%)

Despite the direction given in the guidance, more than half of policies fail to state there should be a written agreement when financial support is being provided.

## Good Practice Illustration – Box 6

### Child in need payments

Where a child is cared for informally or in a private fostering arrangement, the council can make 'Child In Need' payments under section 17 of the Children Act 1989, providing appropriate assessments indicate this will meet the child's needs and including an assessment of the financial circumstances of the family. The status of the placement will determine the nature and amount of the financial support and who authorises it. This is a discretionary payment which will only be considered following the assessment by a social worker. A manager can authorise payments up to an agreed financial limit for a specified time and will confirm this in writing. The payments will be reviewed on a twelve weekly basis.

There are three categories of payment:

- one-off expenditure such as school uniform or bedroom furniture, if the carer's financial position requires this, although a full assessment is not carried out. There may be certain conditions e.g. repayment
- short term financial support e.g. if a carer takes unpaid time off work or a career break to support children into their new environment. An employer should provide information about any relevant parental leave entitlements
- regular payments to enable carers to make adjustments or to continue to care for a child in the longer term. This will be a short term measure for an agreed number of weeks while more permanent arrangements are made

These criteria are applied to all payments made under section 17:

- the payment is made to safeguard and promote the welfare of the child
- a worker is actively involved with the family at least for the duration of the payments
- there are no other legitimate sources of finance
- payments are paid to the carer, not the parents
- the payment would not place any person in a fraudulent position.

From *Bristol City Council Family and Friends Care Policy*

<sup>124</sup> DfE (2011) Ibid para 4.23

### 6.3 Fostering allowances

The statutory guidance is clear about payments to family and friends carers who are approved as foster carers for the children they are raising:

*‘Fostering allowances ...must be sufficient to meet the cost to the carer of caring for the child and should be at least the minimum set annually by the Department for Education. The allowances ...must be calculated for family and friends foster carers on the same basis as for all other foster carers, and any variations should relate to the child’s needs, the skills of the carer or some other relevant factor that is used as a criterion for all of the service’s foster carers.’<sup>125</sup>*

The guidance, citing the judicial review of Manchester City Council’s policy on payments of allowances to family and friends foster carers in 2001<sup>126</sup> confirms it is unlawful to discriminate against family and friends carers by paying them a lower allowance than non-relative foster carers.<sup>127</sup>

The important principle behind these requirements is parity between family and friends carers and unrelated foster carers in terms of the allowance paid to them. This is not an unreasonable proposal, as in-depth studies have demonstrated that children placed with family and friends carers have suffered at least as many adversities as, and often more than, children placed with unrelated foster carers.<sup>128</sup>

**Table 6-5: Does the policy cover the level of fostering allowances paid to family and friends foster carers?**

Does the policy deal with the level of fostering allowance paid to family and friends foster carers?	Frequency	Percent
Yes	19	37%
Partly	14	27%
No	19	37%
Total	52	100%

**Table 6-6 What does the policy state about fostering allowances?**

What does the policy state about the fostering allowance payable?	Yes	Partly	No
It should be at least the minimum set annually by the DfE	11 (21%)	3 (6%)	38 (73%)
It should be calculated on the same basis as for all other foster carers	24 (46%)	2 (4%)	26 (50%)
Any variations should relate to the child’s needs, the skills of the carer, or some other relevant factor that is used as a criterion for all the service’s foster carers	9 (17%)	5 (10%)	38 (73%)
Is the policy consistent with the Manchester judgment?	26 (50%)	1 (2%)	25 (48%)

Three quarters of policies do not state that payments to family and friends foster carers will be at least the minimum amount set by the Department for Education, or that any variation to the payment should be decided according to the department’s criteria used for all foster carers. Half the policies did not state that fostering allowances should be calculated in the same way as allowances for all other foster carers.

Surprisingly, some policies make statements that directly contradict the guidance. While the guidance makes it clear that carers who have temporary fostering approval should receive the same allowances that are paid to any other foster carers<sup>129</sup>, this study shows some local authorities pay them at a lower rate during temporary approval, or do not pay the full rate until approval. Others fail to make it clear that family and friends carers are entitled to be paid fees and allowances on the same basis as all other foster carers once they are approved.

*“Where a child is looked after by the local authority, we have a responsibility wherever possible to make arrangements for the child to live with a member of the family who is approved as a foster carer<sup>130</sup> (The child can be placed with the family members prior to such approval, subject to an assessment of*

<sup>125</sup> DfE (2.11) Ibid para 4.49

<sup>126</sup> R (L and Others) v Manchester City Council [2001] EWHC Admin 707

<sup>127</sup> DfE (2011) Ibid paras 4.49-4.50

<sup>128</sup> Farmer and Moyers (2008) ibid; Hunt, Waterhouse and Lutman (2008) ibid

<sup>129</sup> Ibid para 5.13

<sup>130</sup> Section 22 of the Children Act 1989.



*the placement, for up to 16 weeks. During the first sixteen weeks the Connected Person will receive 50% of the fostering allowance maintenance rate.”*

*London Borough of Bromley Family and Friends Care Policy DRAFT*

*“Where a carer is approved as a carer for a child they will be paid the basic foster care allowance. These rates are paid by the fostering team once the carer has been fully approved.”*

*Warrington Borough Council Friends and Family Care Policy and Placement of Children in Care with Connected Persons Procedure*

Paying family and friends foster carers a full fostering allowance is not an option, it is a requirement. This needs to be clearly spelled out in policies.

#### 6.4 Special guardianship and residence order allowances

The statutory guidance does not specifically state that information about special guardianship order allowances and residence order allowances should be included within local policies. However, it does state that advice and guidance about the implications of the legal orders should be provided.<sup>131</sup> Clearly one such important implication is the financial support that may be available under special guardianship and a carer’s eligibility.

**Table 6-7: Whether the policy covers special guardianship order (SGO) allowances**

Special Guardianship allowances	Yes	Partly	No
Is there a section of the policy that deals with SGO allowances?	16 (31%)	15 (29%)	21 (40%)
Who is eligible to receive SGO allowance?	18 (35%)	8 (15%)	26 (50%)
How will the SGO allowance be paid?	4 (8%)	2 (4%)	46 (89%)
When will the SGO allowance be paid?	8 (15%)	11 (21%)	33 (64%)
How much is the SGO allowance	2 (4%)	1 (2%)	49 (94%)
Is the policy on SGO allowances consistent with the Lewisham judgment <sup>132</sup> ?	11 (21%)	1 (2%)	40 (77%)

**Table 6-8 Whether the policy covers residence order (RO) allowances**

Residence Order allowances	Yes	Partly	No
Is there a section of the policy that deals with RO allowances?	17 (33%)	11 (21%)	24 (46%)
Who is eligible to receive RO allowance?	20 (38%)	3 (6%)	29 (56%)
How will the RO allowance be paid?	3 (6%)	2 (4%)	47 (90%)
When will the RO allowance be paid?	8 (15%)	7 (14%)	37 (71%)
How much is the RO allowance	2 (4%)	0 (0%)	50 (96%)

A significant minority of authorities’ policies did not include key information about either allowance, despite the potential significance of this financial help to some carers and children. The information that was most likely to be included about either allowance was eligibility criteria to receive it.

As stated in chapter 2, the Lewisham judgment referred to in Table 6-7<sup>133</sup> was a judicial review case in which it was held that when calculating the amount of special guardianship order allowance payable, the local authority should refer to its fostering rather than its adoption allowance. Eleven policies were explicitly consistent with the Lewisham judgment. While it may be that other local authorities in the study do pay allowances in line with this legal judgment, this was not made clear in their policies.

#### 6.5 Legal fees

Carers have reported having to spend thousands of pounds on legal fees, particularly where a case is contested, often putting them under intolerable stress. Hence it would be very helpful to carers if policies clarified how they could be helped with this significant expense. Whilst this issue is not addressed in the statutory guidance, we explored the extent to which policies stated how they could help carer’s seeking to protect a child with their legal fees.

<sup>131</sup> Ibid para 4.13

<sup>132</sup> B V London Borough of Lewisham [2008] EWHC 738 (Admin). See explanation of the Lewisham judgement in Chapter 2

<sup>133</sup> B V London Borough of Lewisham [2008] EWHC 738 (Admin)

**Table 6-9: Does the policy address payment of legal fees and expenses?**

Payment of family and friends carers' legal fees and expenses	Yes	no	Not mentioned
Will the local authority consider paying a family and friends carer's legal fees, all or in part?	11 (21%)	4 (8%)	37 (71%)
What does the policy say about payment of legal fees?			
LA will pay legal fees for some SGO applications	9 (17%)	3 (6%)	40 (77%)
LA will pay legal fees for some RO applications	9 (17%)	3 (6%)	40 (77%)
LA will pay legal fees for adoption application	4 (8%)	4 (8%)	44 (85%)
LA will pay legal fees for representation during care proceedings	3 (6%)	4 (8%)	45 (87%)

**Table 6-10: Where policy states local authority pays legal fees, what do they pay?**

Where LA will pay legal fees, does the policy state that:	Yes	No
LA will pay the whole amount	0	5
LA will pay up to specified amount	2	4
LA will pay fees if the child was previously looked after by LA	4	3
Payment of fees must be agreed by a manager	4	4
LA will pay legal fees if carers don't qualify for legal aid	6	3

Since this is not specified in the statutory guidance, it is hardly surprising to find that payment of family and friends carers' legal fees is mentioned in only a small minority of policies. Nevertheless, such help can make a huge difference to carers, who will often be unaware when children come to live with them that an expensive court case is looming and if they have any income or assets (e.g. if they own their own home) they will probably not qualify for legal aid.

Therefore including a commitment and criteria for paying or helping with carers' legal fees and expenses in local policies would be warmly welcomed.

## Discussion

Family and friends carers often face financial hardship as a direct result of taking on kin children<sup>134</sup>. Many lose their job, face extra costs, and struggle at the expense of their own wellbeing and sometimes that of the child. Many are likely to be adversely affected by planned welfare reforms alongside a tough employment market. In order that family members are able to financially afford to care for children in their family and thus prevent some children unnecessarily being placed in expensive unrelated care placements, it is critical that local authorities learn from best practice and:

- Direct carers to sources of sound benefits advice
- Ensure benefits advice services are aware of the particular circumstances of family and friends carers, which may otherwise be unusual to them
- Structure financial help (including section 17 payments and special guardianship order allowances) to reflect the needs of these children and carers and help maximise the chance of the placement working, including the potential invest to save of helping fund legal costs
- Are transparent as to what financial support they will and will not pay and their eligibility criteria, so that family members can make informed choices, and access to support is not based upon who shouts the loudest but on need.
- Comply with the law!

The answer longer term however lies less in the actions of individual local authorities but rather:

- in the introduction of a national financial allowance for carers who are raising children who are unable to live with their parents and would otherwise be in care.
- A benefits system that recognises the specific circumstances of family and friends carers.

<sup>134</sup> Aziz, Roth and Lindley (2012) Ibid

## 7. Other support for family and friends carers: analysis of local policies

### 7.1 Housing

Farmer and Moyers<sup>135</sup> found in their study that overcrowding was an issue for 35% of family and friends carers, compared to only 4% of unrelated foster carers, so this is a significant issue for many family and friends carers and is a factor in deterring more family members from being able to take on the care of children. It could assist their decision if the local policy indicated that they may be assisted to sort out housing problems.

The statutory guidance states

‘Family and friends carers may need support with accommodation, as their homes may not be of sufficient capacity to suddenly take on the care of a child or possibly a sibling group of children. They may have long since down-sized their accommodation, and suddenly find themselves under pressure for living and sleeping space. Living in cramped conditions may well add to the pressures of caring for a child. Housing authorities and registered social landlords should be engaged to ensure that their policies recognise the importance of the role performed by family and friends carers, and that whenever possible family and friends carers living in social housing are given appropriate priority to move to more suitable accommodation if this will prevent the need for a child to become looked after.’<sup>136</sup>

**Table 7-2 Does the policy refer to a protocol between housing and social care services?**

Protocols for partnership working between housing and social care services	Frequency	Percent
Yes	3	6%
Partly	5	10%
No	44	85%
Total	52	100.0

It is welcome that a significant number (47%) did mention that carers in social housing should be given priority to move. However, a majority do not and only a small number of policies (16%) refer to the protocols between housing and social care services which are necessary to enable this to happen in practice.

Nine policies (17%) spell out that section 17 financial support could be used towards accommodation costs. It may be that other councils are willing to make such payments but have not put it into their policies.

**Table 7-1: Does the policy address that carers in unsuitable housing be given priority to transfer**

Support for carers in social housing to be given priority to move	Frequency	Percent
Yes	20	39%
Partly	4	8%
No	28	54%
Total	52	100%

<sup>135</sup> Farmer, E. and Moyers, S. *ibid*

<sup>136</sup> DfE (2011) *Ibid* para 4.24



## Good practice illustration – Box 7

### Housing

Family and friends carers may need support with accommodation, as their homes may not be of sufficient capacity to suddenly take on the care of a child or possibly a sibling group of children. Brighton and Hove Council's Housing Policies recognise the importance of the role performed by family and friends carers. Existing council tenants can be nominated by the children's social worker to move into Band A, which gives the highest priority to tenants, enabling them to bid for a transfer to larger accommodation. There are set terms and conditions to this process which must be adhered to and cannot be varied. Families who are existing tenants, or eligible for re-housing, are also able to apply for privately rented housing, made available to the council by social landlords.

In Brighton and Hove, a Housing Options group made up of social care services and housing staff meets regularly to ensure that the departments work in partnership to support the housing needs which may face family and friends carers across a range of legal circumstances. The child's social worker or a family's supervising social worker can refer to this group. Families can be nominated to a priority allocation system of housing.

Brighton and Hove has the authority under section 17 of the 1989 Children Act to financial support towards accommodation costs where they assess this as the most appropriate way to safeguard and promote a child's welfare.

For housing advice at Brighton & Hove city council you can either email

housing.advice@brighton-hove.gov.uk or telephone: (01273) 294400

Advice on housing issues can also be provided by the Brighton Housing Trust (contact details provided).

From *Brighton and Hove City Council Family & Friends Care policy*

## 7.2 Supporting contact

Children living with family and friends carers are more likely than those in unrelated foster care to have contact with their parents, aunts, uncles and cousins. However, family and friends carers are far more likely than foster carers to have to supervise that contact themselves, despite also being likely to have a more difficult relationship with the child's parents.<sup>137</sup> In short, family and friends carers receive less social work support with managing contact than unrelated foster carers get, but have a greater need for that support. This is clearly an issue that local policies ought to deal with fully, so as to ensure that children are well supported to enjoy their family contact, where it is appropriate for this to take place.

It is therefore helpful that the statutory guidance states:

*'Local policies should identify services available to family and friends carers to support the management of contact arrangements, and where necessary to offer independent supervision of contact.'*<sup>138</sup>

It also states 'Information should be made available to family and friends carers about local contact centres and family mediation services, and how to make use of their services.'<sup>139</sup>

We explored the extent to which local policies addressed this issue.

<sup>137</sup> Farmer, E and Moyers, S ibid

<sup>138</sup> DfE (2011) Ibid para 4.32

<sup>139</sup> DfE (2011) Ibid para 4.30

**Table 7-3: Do policies address support with managing contact**

Does the policy provide or signpost information about:	Yes	Partly	No
the local authority's own facilities for supporting contact	13 (25%)	17 (33%)	22 (42%)
local contact centres	14 (27%)	6 (12%)	32 (62%)
family mediation services	15 (29%)	5 (10%)	32 (62%)
how to make use of their services	10 (19%)	10 (19%)	32 (62%)
Does the policy describe how the local authority will make contact centres and mediation services aware of the challenges that family and friends carers may face, so as to be sensitive to their needs?	2 (4%)	7 (14%)	43 (83%)
Does the policy describe how to deal with contact where there are safeguarding concerns?	5 (10%)	12 (23%)	35 (67%)
Does the policy describe how family and friends carers will be supported where contact has been limited through a court order?	4 (8%)	6 (12%)	42 (81%)
Does the policy identify services family and friends carers can use to support management of contact arrangements?	9 (17%)	5 (10%)	38 (73%)
Does the policy state how independent supervision of contact arrangements can be arranged, if necessary?	7 (14%)	9 (17%)	36 (69%)
Does the policy state who can provide support with contact, e.g. the local authority, contact centre, family mediation service?	14 (27%)	8 (15%)	30 (58%)
Does the policy describe how contact will be promoted for looked after children?	12 (23%)	12 (23%)	28 (54%)

The steps listed in Table 7-3 above are all taken from the statutory guidance's section on supporting contact. Only a small number of the policies give a full account of any of the steps carers can take to ensure there is safe and satisfying contact for children with their families. Instead the picture that emerges from the analysis

is that disappointingly few policies provide full information about local resources for supporting contact and how to make use of these services. If family and friends carers wanted to turn to the policy to get information about how to get support with managing contact, they would mostly find it was not there

### Good practice illustration – Box 8

#### Supporting Contact

Contact with their immediate families is generally a positive experience for children who are not living with their parents, as it can help them to maintain a sense of belonging and identity.

Contact arrangements must always be determined by the extent to which they meet the needs of the child.

But management of contact may often produce emotional and practical strains on all the parties involved.

The placement of the child will, by itself, have altered the dynamics of the family the child has left and the family with whom the child is placed. It can be confusing for the child.

The Council has a duty to promote contact for all children in need. If the child is not looked after by the Council there is a duty to promote contact where it is necessary to do so in order to safeguard and promote the child's welfare.

If the child is a looked after child, the Council is under a duty to promote contact unless it is not practicable or consistent with the child's welfare.

The Council will provide information to family and friends carers about local contact centres and family mediation services and how to make the best use of their services.

The Council may need to be more actively involved if there may be safeguarding concerns surrounding contact, with support provided for safe contact arrangements.

*From Durham County Council Family and Friends Care Policy*

## 7.3 Family Group Conferences

The statutory guidance says that

- Family Group Conferences (FGCs) should be considered as an effective method of engaging the support of wider family and friends at an early stage of concerns about a child who may not be able to live with their parents.
- By building in a requirement to consider holding a FGC at an early stage, the local authority can show the court in any subsequent proceedings what they have done to try to engage the family as required by the Public Law Outline and also help avoid sequential assessments.
- Local authorities should have arrangements in place to offer a family group conference or other form of family meeting as a means to engage families at an early stage and to support them in identifying solutions to difficulties they face in caring for their own children.
- These arrangements should be set out in the local families and friends care policy.<sup>140</sup>

A family group conference is a decision making process led by family members to plan and make decisions for a child who is at risk. It should be facilitated by a trained family group conference co-ordinator who is independent of any case management for the child. A family group conference usually involves wider relatives and others who are connected to the child. Children and young people are normally involved in their own family group conference (FGC), although often with support from an advocate. It is a voluntary process and families cannot be forced to have a family group conference. Families have the chance to get the information they need from a social worker and others professionals and then meet on their own to make a plan for their children. For example, the family could agree that the child goes to live with a relative. The family should be supported to carry out the plan, unless it is not safe.

**Table 7-4 Does the policy address family group conferences?**

	Yes	Partly	No
If the policy does not deal with FGCs directly, does it provide a link to an FGC policy?	14 (27%)	3 (6%)	35 (67%)
Does the policy state that there is a requirement to consider holding an FGC to safeguard children and as part of proceedings?	9 (17%)	7 (14%)	36 (69%)
Does the policy identify FGCs as a good way of identifying potential family and friends carers?	17 (33%)	12 (23%)	23 (44%)
Does the policy set out the arrangements for offering families an FGC?	12 (23%)	20 (39%)	20 (39%)

It is welcome that most policies made some references to a family group conference and that 17% stated explicitly that it should be considered for a child who is at risk or subject to care proceedings. However, given that over 70% of local authorities in England and Wales run or commission family group conferences for some children in their area, it is unfortunate that some authorities failed to include reference to FGCs in their family and friends care policies.

<sup>140</sup> DfE (2011) Ibid para 4.34 –4.37

## 7.4 Support groups

### The statutory guidance acknowledges:

‘Family and friends carers may sometimes feel isolated: that they are the only people bringing up someone else’s child and that nobody else understands the pressures they are experiencing. Getting together with others in similar positions can often be an invaluable source of support in itself, and many family and friends carers derive great benefit from sharing their feelings and receiving peer support. Support groups are a valuable way of helping carers to access information about services which will help them to care for the children, as well as ensuring that they are treated with understanding and respect and receive emotional support. Groups can help to combat the isolation which many carers feel when they take on the role, particularly when they are dealing with the complex needs of vulnerable children, for which they had not planned. Support groups can be particularly important for carers and others who are not in receipt of services from the local authority.’<sup>141</sup>

Family Rights Group assists family and friends carers to set up their own local support groups, advises practitioners about how to get support groups started, and publishes an online database of existing local support groups; Family Rights Group is aware of the different forms that support groups for kinship carers can take and their benefits. Self-help support groups, organised by carers themselves, tend to be available for anybody wishing to attend who is a family and friends carer, regardless of legal status. Support groups organised by local authorities are often run along different lines. Sometimes they are restricted only to carers the local authority has actually worked with, or are for carers with a particular legal status, such as foster carers or special guardians.

We analysed the policies to explore the extent to which this issue is addressed.

**Table 7-5: Does the policy address the running of local support groups?**

Does the policy state that the local authority should support, facilitate or run support groups for family and friends carers?	Frequency	Percent
Yes	7	14%
Partly	13	25%
No	32	62%
Total	52	100%

A surprisingly small number of authorities (39%) made any mention of support groups, despite them being of significant benefit to carers and children and being relatively cheap and easy to set up and sustain.

Moreover, eight policies appeared to indicate that family and friends carers would be expected to attend support groups that would also be attended by others, such as unrelated foster carer and young carers.

### Good practice illustration – Box 9

#### Support groups

Sunderland’s Family and Friends Care Policy provides a list of support groups that are available locally and nationally, and a list of organisations that specialise in particular kinds of support or information.

## 7.5 Support for private fostering arrangements

‘Private foster carers may at the same time be family and friends carers, and facing the same issues as other family and friends carers, and so should have access to the same range of support services as informal family and friends carers.’<sup>142</sup>

Chapter 2 sets out which family and friends carers fall under the definition of private foster carers. Support for private foster carers would be provided under section 17 of the 1989 Children Act, the same legislation that permits local authority assistance for all children in need. This is stated in 21 (40%) policies, the other 60% made no reference to this.

<sup>141</sup> DfE (2011) Ibid para 4.38

<sup>142</sup> DfE (2011) Ibid para 4.42

## 7.6 Support for family and friends foster carers

As explained in Chapter 2, family and friends foster carers are raising *looked after* children within a framework of legislation, regulation and guidance that encompasses all foster carers, regardless of whether they are kin or unrelated to the child. Family and friends foster carers are therefore entitled to the same payments and support services that all other foster carers receive. However, they may not have gone through the same sort of preparation and training that other foster carers go through, particularly if the child came to them in an emergency.

The section of the statutory guidance dealing with family and friends foster carers begins with a

statement about support for these carers that ought to be included in local policies.

'Fostering services must deliver services in a way which ensures that family and friends foster carers are fully supported to care for children placed with them and are not disadvantaged as a result of their prior relationship with the child. This includes access to training to support them in their role. Family and friends foster carers may benefit from some services being delivered in a different way, but there should be equity of provision and entitlement. It is not acceptable to discriminate against foster carers on the basis that they have a pre-existing connection with the child they are fostering.'<sup>143</sup>

**Table 7-6 Does the policy address assessment and support for family and friends foster carers ?**

	Yes	Partly	No
Does the policy clearly state that fostering services must be delivered 'in a way which ensures that family and friends foster carers are fully supported to care for children placed with them and are not disadvantaged as a result of their prior relationship with the child'?	7 (14%)	6 (12%)	39 (75%)
Does the policy state that they should have access to training?	26 (50%)	3 (6%)	23 (44%)
Does the policy state that there should be equality of provision and entitlement with unrelated foster carers, even if some services may be delivered in a different way?	15 (28%)	3 (6%)	34 (65%)
Does the policy state that it is not acceptable to discriminate against foster carers who have a pre-existing connection with the child they are fostering?	4 (8%)	4 (8%)	44 (85%)
Does the policy state that family and friends foster carers will be supported to meet the CWDC's TSD standards?	10 (19%)	4 (8%)	38 (73%)
Does the policy state that the authority should ensure that the TSD standards should be framed and delivered in such a way that carers can see how they support them in their caring role?	3 (6%)	2 (4%)	47 (90%)
Does the policy state that children who are with family and friends foster carers will be eligible for the same support as other looked after children, e.g. priority school places, PEPs, leaving care services, etc.	6 (12%)	4 (8%)	42 (81%)

<sup>143</sup> DfE (2011) Ibid para 4.44

Half of the policies make it completely clear that family and friends foster carers should have access to training.

However, three quarters of policies do not explicitly state that family and friends carers should not be disadvantaged because of their prior relationship with the child, and only four policies make a clear statement that it is not acceptable to discriminate against foster carers who have a pre-existing relationship with the child they are fostering.

Fifteen policies do clearly state that there should be equality of provision and entitlement with unrelated foster carers, even if some services may be delivered in a different way. But only six policies make a similarly clear statement that the children who are placed with family and friends foster carers should be eligible for the same support as other looked after children.

The statutory guidance does confirm an expectation that family and friends foster carers, like all other foster carers, should achieve at least the minimum level of knowledge and skills outlined in the Children's Workforce Development Council's (CWDC's) Training, Support and Development (TSD) Standards<sup>144</sup>. Ten policies make a clear statement that they will support family and friends carers to achieve this. Although the CWDC has produced separate standards specifically for family and friends carers, only three policies stated that the standards should be framed and delivered in such a way that carers can see how they support them in their caring role.

The statutory guidance also expects local policies to include clear statements that the local authority will deliver support and training in ways that are appropriate and encouraging for family and friends carers. Unfortunately, only a few policies have picked up on the guidance's stipulations in this respect.

### Good practice illustration – Box 10

#### Training for family and friends foster carers

On approval, family and friends foster carers will have the same status as other foster carers although they are approved for a specific child or children. While it is recognised that family and friends carers have a particular relationship and position, the fostering service will always work within the standards and regulations, which apply to fostering services. However, local practice relating to the needs of family and friends foster carers will continually be developed to better tailor services to their needs.

In practice this means:

- The relevant requirements of the Fostering Services National Minimum Standards and the Fostering Services Regulations 2002 will be applied and they will be subject to the same supervision, support and regulation and policies as local authority carers.
- The carers must sign a foster carer agreement and will be provided with a copy of the foster carers handbook and any other literature normally received by other carers.
- A social worker from the fostering team will be allocated to offer supervision, advice and support and to identify training needs.

Kinship carers will receive the same relevant payments as any other carers including all the additional allowances.

*From Northamptonshire County Council Kinship Care Policy and Procedure*

<sup>144</sup> Ibid para 4.45



7.7 Complaints

The statutory guidance says that local policies should explain to children and young people, families and friends carers and other relevant people how they may make a complaint about the service, and signpost them to their complaints procedure.<sup>145</sup>

Table 7.7 Does the policy address how complaints can be made

Does the policy ‘explain or signpost how children and young people, families and friends carers and other relevant people may make a complaint about the service?’	Frequency	Percent
Yes	17	33%
Partly	16	31%
No	19	37%
Total	52	100%

One-third of policies provided a full explanation of how all parties involved in a family and friends placement could make a complaint, or provided signposting. Unfortunately, 37% did not provide any information at all about complaints.

7.8 Meeting particular carers’ and children’s needs

The analysis concluded by examining whether the policies described how the needs of particular groups of family and friends carers (older carers, younger carers, carers with multiple caring roles) would be met. This is not a requirement of the statutory guidance, but it is relevant to the lives of many carers and children. A recent analysis of the 2001 census<sup>146</sup> showed that the vast majority of family and friends carers were grandparents (46%) or sibling carers (34%). The average age for grandparent carers was 58, and for sibling carers was 34, meaning that significant numbers of them were likely to have been over 65 or under 30.

In an internet-based survey of family and friends carers carried out by Family Rights Group in 2011<sup>147</sup>, 229 of the 493 carers who completed the survey stated that at least one of the kin children they were raising had some sort of special need or disability. Of these carers, 14% also cared for an adult with a disability or special needs, 21% were caring for a child or children of their own with a disability or special needs, and 5% cared for both. Clearly, it is likely that significant numbers of family and friends carers will have multiple caring roles within their families.

Unfortunately, only three policies analysed made any references to older carers aged 65 years plus, only two made reference to sibling carers and only one acknowledged the multiple caring roles that many family and friends carers have, such as caring for their own parents or a disabled partner. Again we would recommend authorities consider this when drafting or reviewing their policies.

145 DfE (2011) Ibid para 4.52

146 Shailen, N., Selwyn, J., Farmer, E. and Vaisey, P. (2011) *Spotlight on Kinship Care: Using Census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth Century* Bristol: University of Bristol

147 Aziz, R. and Roth, D. and Lindley, B (2012) Ibid

## Plain English

Policies were also assessed throughout the analysis for the plainness and clarity of their language, and marked down if they seemed to use too much jargon or technical language that could be difficult for family and friends carers to understand.

These ratings have been added up to produce an overall rating for the policies' use of plain, clear English. The standard of evaluation was whether a reader with no special background in law or social work would be able to understand what the policy was saying.

- 58% of policies were judged to be clearly written in plain English
- 26% of policies were judged to contain some jargon, but could be understood with some effort
- 16% of the policies were judged to use too much jargon and technical language

Overall, this is an encouraging finding, with over half of the policies judged to be written in clear, plain English. Analysts did comment that certain policies would have scored more highly overall, as they had good content, but the style of writing made them very hard to understand.

## Discussion

At a time of harsh financial constraints, local authorities are facing very tough choices. However, there are potentially significant benefits (including savings in the longer term) to councils in utilising their family and friends care policies as an opportunity to:

- Direct family and friends care carers to existing service provision, whether or not run by the local authority, e.g. benefits advice; children's centres
- Offer family group conference services to the family which can be instrumental in identifying wider family members who can raise a child who would otherwise be in unrelated care
- Refer family and friends carers to contact and family mediation services which can be key in addressing tensions within a placement (e.g. between parents and carers) which could otherwise lead to placement breakdowns
- Invest in local support groups (at relatively little cost) to enable children and carers to get peer support, but also such groups are potentially an excellent consultative forum for the authority
- Work with partners (across the authority, voluntary and community organisations and other agencies e.g. schools and colleges, social housing providers, Job Centre Plus, Health centres, Young Offending Teams etc) to increase awareness and improve the overall provision and support that these often very vulnerable children and carers receive.

## 8. Summary and conclusion

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### 8.1 Conclusions

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Overall, analysts rated 12 of the policies as outstandingly good, and 14 as outstandingly poor. The remaining fifty per cent were in the middle range.

The policies that were rated the most highly were likely to have the following features:

- **Clarity.** They were written in plain, accessible English, with a minimum of jargon and technical language, and some contained a glossary of terms to assist readers unfamiliar with legal and social work terminology. They were laid out in a way that made it easy to find information.
- **Easy to access** via the council's website, with informative explanatory leaflets easily available, and details of how to contact relevant staff, e.g. the responsible manager and any dedicated kinship team or workers.
- **Content:** highly rated policies included:
  - Comprehensive cover of all the policy areas included in the statutory guidance, where necessary going beyond the minimum requirements of the statutory guidance to meet specific identified needs
  - A range of information about support and services that appear well tailored for the needs of family and friend carers, including support groups and mentoring
  - Clear explanation of the different legal arrangements, possibly with illustrative case studies
  - Clear explanation of rates of financial support carers can be paid, according to legal status of the arrangement
  - Local authority's assessment of practical and financial support that carers receive based on child's needs, and not dependent on legal status of the arrangement
  - Recognition of the particular challenges that family and friends carers face, including issues that children may bring with them, possibly due to earlier experiences of abuse and neglect, and support carers may need in order to address this
  - Signposting to where additional information and sources of independent advice might be found
  - Contact recognised as being a particular challenge for family and friends carers, with practical measures suggested to assist

Conversely, the most poorly rated policies were likely to include the following features:

- Procedural document for staff rather than policy for family and friends carers to read, with jargon, technical language and unexplained abbreviations making it hard for non-professionals to understand
- Limited scope, only providing adequate information about certain policy areas or legal arrangements, or leaving out key policy areas
- Negative or unhelpful attitude towards carers, for example
  - Focus on limiting financial payments, giving the impression that the aim of the policy is to save money rather than to inform carers about support
  - Lack of specific information about what support and finance can be provided, and eligibility to receive them under various legal arrangements, making it hard for carers to make an informed choice
- Statements that appear not to be legally supportable, e.g.
  - that an emergency placement can only last for six weeks;
  - that carers approved as temporary foster carers under regulation 24 will only be paid half the fostering rate;
  - that when children are voluntarily accommodated under section 20, the family and friends carers should be paid a discretionary allowance from section 17 funds for children in need, rather than a fostering allowance.
- Makes references to other policies and documents without attaching them or saying how to find them

Local authorities have clearly struggled to produce family and friends policies in the short timescale between the issuing of the Guidance in March 2011 and the deadline of 30th September 2011. In a harsh financial climate this is understandable, and for many councils this is clearly an ongoing piece of work. Still, almost six months after the deadline date nearly one in two English councils had not published a policy. It is not possible to know whether the absence of a policy is due to the council not

prioritising family and friends care or not prioritising policy-writing.

Moreover, this study suggests that the **postcode lottery of support** which Family Rights Group found in its 2009<sup>148</sup> survey of local authority policies is still apparent. While it would be expected that there would be some variation if policies were based on consultation and information about local need, most of the variation was not of this nature. Information that was required by the statutory guidance was left out by some, and covered in varying amounts of detail by others.

## 8.2 Recommendations

The following points have emerged as the issues that most urgently need to be addressed by local authorities in their family and friends care policies:

- **Local authorities have to produce a family and friends care policy.** This is both something that they have to do, because the statutory guidance requires it, and also something that they ought to do, because it will help to ensure good outcomes for vulnerable children.
- **Policies should observe both the letter and the spirit of the statutory guidance,** as a minimum, in order to provide a service that will be sensitive to the needs of family and friends carers and the children they are raising.
- **The policy should not just be a procedural document for social workers and practitioners.** It should be a document that family and friends carers, who may be unfamiliar with social work and legal terms, can read and understand. This means that it should be written as far as possible in non-technical language, with a glossary to explain terms and abbreviations.
- **Policies should comprehensively address policy areas covered by the statutory guidance.** The analysis of the policies received has highlighted the most significant deficiencies needing to be addressed:
  - Policies need to contain **clear information about the support that is available, and eligibility for receiving it.** They should also contain clear information about the financial support that is provided, according to what the legal arrangement is, and eligibility for any additional or enhanced payments. Sections of the policies dealing with financial arrangements need to be legally supportable.
  - There should be **a clear explanation of the different legal arrangements** that may be open to family and friends carers, including what finance and support would be available, to assist them with making an informed choice about what would be best for them and the child.
  - Policies should be **based on evidence** of the actual needs and wishes of carers and children, drawing both from research information and from local consultations with carers, children and parents.
  - Policies should include **information about types of support** specifically for older family and friends carers, those with multiple caring responsibilities and younger carers. This should include more joined up working with Adult Social Services.
  - Policies should require discussions with and dissemination of information to colleagues in other council departments and external service providers including schools, colleges and health centres, to develop improved understanding and **partnership working** to address the particular challenges facing family and friends carers.
- Finally, we would recommend that policies should be clear about what help they give with **legal fees** to family and friends carers and the eligibility criteria that will be applied.

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<sup>148</sup> *Report on Freedom of Information survey of local authority policies on family and friends care* (2009) Family Rights Group and University of Birmingham

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