

Understanding family and friends care: the relationship between need, support and legal status

Carers' experiences

Summary

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Introduction

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Many thousands of children in the UK are being brought up by members of their extended families or social networks because their parents have been considered incapable of safely looking after them. Some of these carers are approved by the local authority as kinship foster carers, some have obtained special guardianship, adoption or residence orders through the courts, others are caring informally or are privately fostering.

Children's Services can provide financial and other support for such arrangements. However they are only legally obliged to do so where the child is a looked after child¹, when the carer must be assessed and approved as a kinship foster carer. The aim of this study was to examine the links between the legal status of the arrangements, the support provided and the needs of the children and their carers.

In 2011 the government issued long-awaited statutory guidance to local authorities on family and friends care², which, amongst other things, requires them to publish a policy setting out their approach towards promoting the needs of all children living with kinship carers, whatever their legal status. Crucially, the guidance emphasises that policies should be underpinned by the principle that support should be based on the needs of the child rather than merely their legal status, and that children should receive the support they and their carers need to safeguard and promote their welfare, whether or not they are looked after³.

Evidence from the carers interviewed in this study suggests that such guidance was badly needed, although there are significant concerns as to whether it is being implemented⁴.

Key Findings

- **Most children, irrespective of legal status, had been exposed to substantial and potentially damaging adversities prior to placement and presented significant difficulties to carers.**
- **There was no correlation between the support offered or given by Children's Services and either the level of difficulty the child was presenting or the needs of the carers.**
- **There was considerable evidence of unmet need across all legal statuses.**
- **Foster care status put carers in a more advantageous position, particularly financially.**
- **Local authorities appeared reluctant to confer foster care status, even where they were involved in making the arrangements. Such status seemed to depend on circumstances rather than the needs of the child or carer.**
- **Placements were typically treated as private by the local authority but this was almost never made clear to carers at the outset, in contravention of case law⁵.**
- **When taking on the child, carers were rarely in a position to make an informed decision about the legal status of the arrangements and were not usually signposted to independent sources of information and advice.**

The Study

This is a three year project being conducted by Family Rights Group in partnership with the University of Oxford, with a grant from the Big Lottery Fund. The project aimed to address the following questions:

1. How and why do children end up in kinship placements under different legal statuses?
2. Is decision-making child-centred and needs-based or influenced primarily by other factors, such as local authority policies and practice or the child's route to placement?
3. Are carers able to make informed decisions about the placement's legal status?
4. How does placement support relate to a) legal status b) the needs of the child and carer?
5. How difficult is it for carers to obtain appropriate support?
6. What is the impact of support or its absence, on the placement?
7. What changes in law, policy and practice are needed?

This summary⁶ relates to the first part of the study, which consisted of in-depth interviews with kinship carers in 95 households, conducted between October 2010 and July 2011. Interviewees were recruited in two ways. Sixty four were drawn from carers who had contacted the Family Rights Group advice line between December 2008 and October 2010. The rest were identified through other organisations in the Kinship Care Alliance⁷ and the National Association of Kinship Carers.

The second stage of the research, which is also complete and being reported separately⁸, involved an on-line survey of almost 500 kinship carers. In the third stage, which has just begun, it is planned to interview a range of key professionals including Children's Services staff, lawyers, judges and officers of the Child and Family Court Advisory and Support Service (Cafcass). The project is due to complete in the summer of 2013.

Findings

Challenging children

Most of the children in this study were likely to be very needy because of prior exposure to factors potentially damaging to their well-being, experiencing, on average, 11 different types of such adversity. Ninety-two per cent were with their carer primarily because of parental substance abuse (60%), abuse or neglect (59%), parental mental illness (28%) or domestic violence (27%). Sixty-seven per cent had had child protection plans and 17% moved to their carer from local authority foster placements. Not surprisingly, most (85%) were manifesting difficulties at the point they came to live with their carer. A standardised measure⁹ completed by carers of children aged three and above on placement indicated that 26% were functioning in the abnormal range, more than twice that expected in the general child population (10%), with a further 16% being borderline.

On the basis of this and carer reports, 59% of children were judged by the researchers to be challenging at the start. A third of children were categorised as challenging at the point our research was conducted. Only a third were problem-free.

The impact on carers

Caring for children with such a poor start in life, and watching them progress, was a hugely rewarding experience for most carers. However taking on a child in these circumstances demands huge adjustments and sacrifices and often causes considerable stress. Using a standardised measure of well-being¹⁰, 65% of current carers were assessed as having raised stress levels, twice that in the general population, with 38% currently exhibiting high levels of stress. While a range of stressors associated with kinship care were identified, stress was clearly correlated with the degree of difficulty the child was presenting.

Non-financial support

Although there were pockets of good practice, evidence of unmet need was ubiquitous, across all legal statuses. Support appeared to bear no relationship to the child or carer's needs.

- 95% of carers identified at least one form of support they had needed, but not received, at some point during the placement. Most mentioned several.
- 72% rated the support they had received from Children's Services as poor or very poor. Only 54% were able to think of anything helpful (other than financial assistance) in their contact with Children's Services.
- Only 31% of those still caring for the child were satisfied with the support they were receiving from Children's Services. This proportion dropped to 18% of those caring for a child whose score on the SDQ indicated abnormal functioning.
- Carers caring for children categorised as challenging were more likely than other carers with easier children to be receiving no help from Children's Services because their case was closed. Even where the case was still open, these carers were less satisfied than other carers with the support they were receiving.
- Only 10% of carers with high stress levels said they were satisfied with the support they were receiving, compared to 52% of those with low stress levels. None of the carers with high stress levels who were still involved with Children's Services were satisfied with the support they were receiving.

The advantages of foster care status

Foster care status put carers in a more advantageous position financially.

- All those who were currently kinship foster carers were in receipt of a regular allowance from Children's Services compared to less than 70% of other carers. Allowances for the latter were typically lower.
- Even taking into account other sources of income, such as child tax credit and child benefit, 44% of those not acting as foster carers (because the children were not *looked after*) had no more than £100 a week coming in specifically for the child. Only 16% of foster carers were in this position. While 65% of foster carers said the total amount of money they were receiving for the child was sufficient, this was the case for only 28% of those caring informally, 32% of those with a residence order and 35% with a special guardianship order.
- Carers with residence or special guardianship orders typically received higher allowances from Children's Services if they had previously been kinship foster carers than other carers with these orders who had never had this status.
- Those treated as foster carers in the early stages of the placement were more likely than other carers to receive an allowance quickly, to receive a higher amount, to experience less difficulty in getting it and to get assistance with start-up costs.
- Only 37% of those treated as foster carers in the early stages said it had been difficult to cope financially, compared to 74% of other carers, even where Children's Services had been involved in making the arrangements.

In terms of non-financial forms of support, the differences – although less marked – were still evident.

- Those who had been foster carers throughout the time the child had been with them rated the support they had received from Children's Services more highly than other carers, giving an average score of 2.3 out of 5 compared to 1.6 from other carers. They were also more likely to identify something which had been helpful in their contact with Children's Services (73% compared to 51%).
- Those who had ever acted as foster carers for the child were more likely to have received services other than input from the child's social worker (84% compared to 63%) and to have

received a higher number of services (mean 1.65 compared to 1.1).

- Those treated as foster carers in the early stages were marginally less likely to identify an unmet need for support (90% compared to 96%).

Children's Services decision-making about foster care status

- The experience of the carers in this study suggests that Children's Services are very reluctant to treat a kinship arrangement as a statutory foster placement and that this decision appears to be based on circumstances rather than the needs of the child.
- Even where Children's Services were plainly involved in making the arrangements, only 26% (20 of 76) were treated as foster placements from the start. Carers who took in the children themselves, even if they informed Children's Services immediately, had no chance of achieving this status.
- 85% of arrangements which were treated as foster placements from the start involved *either* children who had been *looked after* by the local authority immediately prior to moving to kin or were subject to care proceedings. Those taking on children in other circumstances were extremely unlikely to be treated as foster carers although recent case law¹¹, which clarifies the circumstances in which such children should be treated as *looked after*, suggests that many should have been.
- There was no correlation between foster care status and the level of difficulty the child was manifesting. The majority of children who were categorised as challenging (33 of 56; 59%) were never treated as *looked after* children while with their kinship carer.

Making informed decisions

Although the majority of arrangements started off being treated as private by Children's Services, this was rarely how carers had understood their position and very few said that this had been explained to them. Most therefore just assumed that the child had been placed with them by the local authority, who would therefore incur some obligations to support them, only to be shocked to discover later, usually when they asked for financial support, that neither assumption was correct. The possibility of becoming a foster carer was rarely discussed: of 61 cases in which Children's Services were involved in making the arrangements, either without or before the involvement of the court, only 10 carers said they had been given any information by social workers about the different legal statuses available.

Carers were typically not in a position to make an informed decision at the outset about the legal status of the arrangements. Most took on the child in circumstances which gave them no time to do their own research and few realised at the time that that this would be beneficial. Children's Services do not appear to have helped by signposting them to independent sources of information, only 11 people reporting this, all but three merely being told to consult a solicitor, typically about obtaining a residence order.

When carers did find their way to independent information and advice, some were able to use it to argue successfully that they should be assessed as foster carers, others to increase the support they received.

Carers' messages to local authorities

1. Sort out the money. Carers want a funding system that is clear, transparent and consistent across the country. One based on entitlement, not discretion, independent of the child's legal status, not means-tested and set at the same level as the allowances paid to unrelated foster carers.
2. Ensure information and advice is available. Carers want to be given information about local authority policies, about the support available, and about all the legal options.
3. Improve non-financial support and make it more accessible. This is important given the high level of difficulties the children had.
4. Local authorities should have transparent policies and procedures, which accord with the Children Act, and should ensure they are followed.
5. Ensure social workers are knowledgeable about kinship care.
6. Value carers, listen to them, work with them. Be honest, open and trustworthy.

Carers' messages to government

1. *Provide* a consistent national framework for financial support.
2. *Audit* how local authorities are interpreting the Children Act.
3. *Require* local authorities to provide adequate information, signpost carers to independent sources of information and advice and provide support on a par with foster carers.
4. *Provide* easier access to legal advice and funding for legal costs.
5. *Speed* up the legal process.

Carers' advice to potential carers

1. Get independent information and advice and do not rely solely on what Children's Services say.
2. Legal advice is important but solicitors can vary in their familiarity with kinship care or their willingness to take on the local authority on behalf of the kinship carer.
3. Be assertive and persistent with Children's Services and ensure agreements are in writing.
4. Be realistic about the impact of caring, talking to other people who have been carers.

References

- 1 A formal designation indicating either that the child is accommodated under section 20 of the Children Act, 1989, or is subject to a care order, interim care order or emergency protection order.
- 2 Department for Education (2011) *Family and Friends Care: Statutory Guidance for Local Authorities*. London, DfE
- 3 DfE, 2011, paras 1, 2 4 and 6.
- 4 Roth D, Aziz R, Lindley B (2012) *Understanding family and friends care: local authority policies - the good, the bad and the non-existent*
- 5 Southwark LBC –v- D [2007] 1 FLR 2181; A –v- Kent Local Authority [2011] EWCA 1303
- 6 This first part of the study is reported in full in Hunt, J. and Waterhouse, S. (2012) *Kinship Care-the impact of legal status on support. the experiences of relatives and friends who cannot live with their parents*. Family Rights Group
- 7 The Kinship Care Alliance was formed in 2006, by organisations and individuals with an interest in kinship care, to raise the profile of this form of care in government policy and to campaign for improved services.
- 8 Aziz R, Roth D, Lindley B (2012) *Understanding family and friends care: The largest UK survey* (Family Rights Group)
- 9 R. (1997) 'The Strengths and Difficulties Questionnaire: a research note'. *Journal of Child Psychology and Psychiatry*, 38, 581-586
- 10 Goldberg D and Williams P (2006) *A User's Guide to the General Health Questionnaire*. GL Assessment, London
- 11 Southwark LBC –v- D [2007] 1 FLR 2181; A –v- Kent Local Authority [2011] EWCA 1303
- 12 Southwark LBC v D [2007] EWCA Civ 182; R (SA) v Kent County Council [2011] EWCA Civ 1303.

The full report Hunt J and Waterhouse S (2012) *Understanding family and friends care: the relationship between need, support and legal status – Carers' experience* (Family Rights Group) can be downloaded from www.frg.org.uk or purchased for £12.99 plus postage and packaging from Family Rights Group 020 7923 2628 or ordered online <http://www.frg.org.uk/online-shop>

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Recommendations

1. Local authorities with responsibility for Children's Services must implement the statutory guidance on family and friends care, ensuring they formulate, publish and act in accordance with policies which reflect the principle that support is based on need not legal status, and that children and carers receive the financial and other help they need.
2. Government needs to audit local authorities' response to the statutory guidance to ensure it is being faithfully and effectively implemented across the country.
3. If this is not effective then consideration needs to be given to legislating to give kinship carers a statutory entitlement to support irrespective of legal status.
4. A careful assessment of the needs of the child and the carers should be carried out in all cases where the local authority is involved and a plan formulated, in conjunction with carers, as to how those needs will be addressed.
5. Local authorities need to be clear with carers about the support available and how it can be accessed.
6. Local authorities must take steps to ensure they are acting lawfully when taking decisions about the legal status of a child entering kinship care and that social workers are aware of Court of Appeal rulings on when a child should be treated as accommodated under section 20 of the Children Act 1989.
7. Local authorities must ensure carers and potential carers are in a position to make an informed and carefully considered decision about the legal status of the arrangements. This requires not only information and explanations about the full range of legal statuses available to them and the implications of each in terms of support, but signposting carers to independent sources of information and advice.
8. The government should stipulate that carers cannot be asked to give their agreement to a placement being treated as private until they have had an opportunity to consider this information.
9. Local authorities should take steps to ensure that all staff working with kinship carers are competent in this area of practice and work with carers in a spirit of partnership.
10. All kinship carers with whom Children's Services are involved should be allocated a kinship care support worker from the outset.