

Family and Friends Care Guidance

Consultation Response Form

The closing date for this consultation is: 18 June
2010

Your comments must reach us by that date.



department for
children, schools and families

THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online or offline response facility available on the Department for Children, Schools and Families e-consultation website (<http://www.dcsf.gov.uk/consultations>).

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential.

Name Children in Safeguarding Proceedings Committee
Organisation (if applicable) Family Justice Council
Address: Room E201, Royal Courts of Justice, Strand
London WC2A 2LL

If your enquiry is related to the policy content of the consultation you can contact Helen Jones by telephone: 0870 000 2288 or email: friendsandfamilyguidance.consultation@dcsf.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit by telephone: 01928 794888 or e-mail: consultation.unit@dcsf.gsi.gov.uk

Please select one choice from the list below to indicate what type of organisation you work for or represent

<input type="checkbox"/> Local Authority	<input checked="" type="checkbox"/> Non-Departmental Public Body	<input type="checkbox"/> Family and Friends Carer
<input type="checkbox"/> Young Person	<input type="checkbox"/> Third Sector Voluntary Organisation	<input type="checkbox"/> Other Children's Trust Partner
<input type="checkbox"/> Other		

Please Specify:

The Family Justice Council was formed in 2004. Its primary role is to promote an interdisciplinary approach to family justice, and through consultation and research monitor how effectively the system, both as a whole, and through its component parts, delivers the service the public, and the Government, need and to advise on reforms necessary for continuous improvement. Its members include judges, lawyers, social workers and health professionals. The Children in Safeguarding Proceedings Committee is concerned principally, but not exclusively with safeguarding children under the Children Act 1989.

Is your role in front line service provision or a managerial role

<input type="checkbox"/> Front Line	<input type="checkbox"/> Managerial	<input checked="" type="checkbox"/> Not Applicable
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Please Specify:

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Ease of use and clarity

1 Is the draft guidance clear about who we mean by family and friends carers and other connected people?

<input type="checkbox"/> Very clear	<input type="checkbox"/> Clear	<input type="checkbox"/> Not very clear
<input type="checkbox"/> Not at all clear	<input type="checkbox"/> Not sure	

Comments:

2 Does the guidance address the right issues?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

3 Are local authorities' statutory requirements clear in the draft guidance?

<input type="checkbox"/> Very clear	<input type="checkbox"/> Clear	<input checked="" type="checkbox"/> Not very clear
<input type="checkbox"/> Not at all clear	<input type="checkbox"/> Not sure	

Comments:

The FJC welcomes the production of statutory guidance for local authorities relating to their responsibilities for friends and family care. This is an issue on which specialist child care solicitors are frequently called upon to advise. The placement of children who are subject to care proceedings with friends and family carers has grown substantially over the last few years. Lack of support for these placements can leave children and their carers in highly adverse circumstances, which undermine both children's well-being and these placements. Lack of clarity about local authority obligations, their policies in relation to matters over which they have discretion and the different powers relating to the carer's status are matters which concern legal representatives, children's guardians and judges and magistrates considering care plans in care proceedings. Clearer policies and guidance should avoid the need to spend so much time in proceedings seeking clarification from the local authority about what it will provide for a relative carer.

This guidance together with the appendices is long and detailed. The Committee considers that its length is counter-productive; busy practitioners in hard-pressed local authorities are unlikely to have the time to become familiar with it. There has been a very substantial growth in the length of guidance issued by the Department in recent years, which has added to the bureaucratisation of social work, rather than supported the development of good professional practice. The FJC considers that at a time of severe financial restraint central government should undertake the work required to produce succinct, clear guidance rather than create work within the system by producing such long documents. Particularly, it recommends that the Department should limit itself to a maximum of 24 pages in this guidance (including appendices). In stressing this it notes that this guidance is not stated to be self contained – readers are enjoined to consult a range of further guidance, on placement, on adoption and on special guardianship which totals more than 200 pages. Any cross references (which should be far more specific) should bear in mind the need to support practitioners not burden them.

Chapter 4.

This should simply and clearly state what the requirement for policy is, not seek to tell local authority policy makers what policy is or the basic rules of good governance. This can be conveniently done in a separate Circular so that the substantive document focuses on law and practice with a short summary of

research findings.

It would be clearer if Guidance only used the word must where there is a clear legal duty and other terms where the basis for the expectation on local authorities is s. 7 Guidance.

Para 104 relating to work could helpfully indicate the rights carers have to leave in relation to caring responsibilities and (possibly) sources of advice about this and about out of work benefits. It is not appropriate in this form of guidance to set out statements about what is thought best for individuals, which must be for them to decide. Of course their decisions will necessarily be taken in the context of the rules about availability for work when claiming benefits where these apply to people with caring responsibilities.

4 Is the legal framework around family and friends care made clear in the draft guidance?

Very clear

Clear

Not very clear

Not at all clear

Not sure

Comments: Whether or not a child is looked after is a crucial issue on which key local authority responsibilities depend, both whilst the child is looked after and (under the leaving Care duties) subsequently. This is a matter of law, which should be acknowledged. The guidance should state more clearly and accurately than para 25 currently does the test set out in the Southwark judgment, so as to minimise the number of disputes about whether a child is accommodated or not. This is particularly important because social workers/managers, parents and carers may not have access to legal advice when decisions are made to agree protective arrangements involving children being cared for away from home. The FJC also commends the tabular explanation of the law set out in the Kinship Care Alliance's response as clear and accurate comparison of the different legal statuses which carers may obtain.

Rather than making repeated reference to legal provisions and their requirements throughout, the guidance would be clearer if the law was stated succinctly and accurately in one place. This is particularly important in relation to the duty to prioritise placement with friends and family in s. 22C(6) (7), which is actually very narrow, being limited to carers who are approved foster carers. Although there are other circumstances where such placements are

appropriate, the new legal duty is limited. It is not appropriate for guidance to be used to stretch the legislation.

Given that the definition of relative in regulations is based round relationships of blood or marriage, it is worth specifically drawing attention to the fact that where there was no marriage a person will be outside the definition, e.g. a former unmarried partner of an uncle is not a relative within the definition. Given the prevalence of informal relationships. (para 93 but probably better located in a section on law, as indicated above) .

In relation to annex E it would be more logical if residence order was on the left of special guardianship as it is generally a more limited order and special guardianship is also more limited than adoption. The text of Annex E is not always apt e.g. 'benign' reasons for an SGO. The key routes are an application by a relative with or without the support of living parent and with or without the support of the LA. It is inadequate just to state that parental responsibility is shared, limits to the carer's action should be indicated. References to 'the Munby judgement' are obviously inadequate. Including statutory provisions and reference to regulations and even paragraphs of the guidance would make this document far more useful, and avoid the need for much of the explanation of legislation in the text.

The information on special guardianship etc should be contained in a single section on law (as stated above).

If it is thought necessary to include the legislation in an appendix, rather than by a weblink which is kept up to date, it is essential that it is clear what is in force. The FJC would advise against including legislation which is likely to be amended and will shorten the effective life of the document. (Annex G)

Care proceedings

Whilst the FJC supports the use of the pre-proceedings process in relation to care proceedings it considers that the statement in para 61 goes too far in appearing to demand that friends and family care be explored before proceedings are brought. The Children Act 1989, vol 1 Guidance acknowledges that the pre-proceedings process cannot be used in both emergency and immediate cases. In these cases, delaying care proceedings whilst potential carers are identified and considered leave children at risk. Members of the FJC are concerned not only about delay in proceedings but frequent delays before proceedings start. The Guidance here should recognise that this is a problem and match that provided in vol 1, not seek to put local authorities under further constraints. The guidance is also repetitive, with this point being made again, in slightly different words in para 69.

Whilst members are unaware of examples where children have become looked

after solely to provide support to carers (para 65) , it remains the case that the legal regimes of support are very different where children are looked after and where they are not. Guidance needs to recognise this and point out that if local authorities wish to avoid the need for children to be looked after they need to ensure support for long term arrangements should be as robust where children are looked after and where they are not.

5 Is the structure of the draft guidance clear and useable?

Yes

No

Not Sure

Comments: The guidance has 4 key elements policy, practice, research evidence and law. The guidance would be clearer if these 4 elements were separated. Indeed, the guidance which requires local authorities to develop local policy covering specific topics could conveniently be set out in a 2 page circular. This would avoid confusion between law, policy and practice, and allow the document to focus on stating the legal position and providing guidance for practitioners, who will in any even have to work within their employer's policies. Providing very detailed policy guidance risks repeated legal challenge by judicial review on the basis that local policy is unreasonable set against the detail provided by the Department. Whilst the FJC recognises that JR applications have led to rulings which have improved the law and benefited clients (children and carers) it is concerned about the potential expense of resource on litigation generated by inappropriately detailed or unclear guidance.

Balancing the various aspects of the child's needs

Guidance is never going to substitute for professional decision –making for an individual child. At the most it can hope to do is to help ensure that those making decisions have in mind the relevant considerations. To this end the FJC suggests that some thing closer to a checklist than a series of discursive paragraphs would be more useful.

Overseas family and friends carers

The reference to the Hague Protection Convention and Brussels IIa are obscure and unhelpful. The will not assist any social worker or policy maker to understand this area of practice or make individual decisions. Also, the DfE should not expect lawyers in each local authority to be well-versed in these unusual and fast-developing areas of practice. It would be far more appropriate for the DfE to provide practical support in such cases through an advice line, possibly in conjunction with the Central Authority. This would obviate the need to try and provide universal guidance on an issue which will be uncommon for most practitioners and many authorities, will depend on the overseas

jurisdiction concerned and the child's immigration status both here and in the overseas country. para 74

6 Are the appendices helpful? Please state which are helpful or unhelpful and why.

Very helpful

Helpful

Not very helpful

Not at all helpful

Not sure

Comments:

Implementation

7 Is the draft guidance sufficiently clear about the expectations of local authorities and children's trusts in relation to supporting family and friends carers?

Yes

No

Not Sure

Comments: Local authority obligations to provide family support are set out in s.17 and Guidance is provided in Vol 2. When this guidance is updated it should clearly reflect guidance in this document. Inevitably local authorities will have to determine priorities in individual cases. Support to children cared for outside the care system will necessarily be very substantially less than that provided where children are looked after because legal obligations are owed to looked after children whilst local authorities have wide discretion in relation to family support, and because budgets are more limited. These differences should not be fudged through guidance which (unrealistically) exhorts local authorities to do more than very constrained budgets allow. It follows that the statement in para 48 about determining services by reference to needs rather than legal arrangements fails to reflect the legislative structure which is in place. Whilst members are unaware of examples where children have become looked after solely to provide support to carers (para 65) , it remains the case that the legal regimes of support are very different where children are looked after and where they are not. Guidance needs to recognise this and point out that if local authorities wish to avoid the need for children to be looked after they need to ensure support for long term arrangements should be as robust where children are looked after and where they are not.

Para 37 may be an accurate reflection of the research evidence - there is an absence of evidence- but is unhelpful in this Guidance. Either the DfE supports the provision of support for kinship carers or it does not.

Whilst most family and friends carers will have to rely on universal services it will be crucial that such services are well publicised as open to such carers and that services are accessible and welcoming to them.

8 What will be the challenges for local authorities and children's trusts in the implementation of the draft guidance?

Comments:

9 Will there be any difficulties posed by the data collection requirements outlined in paragraph 83?

Yes

No

Not Sure

Comments:

Having stated that local authorities should focus on the needs of the child not the legal status the guidance proposes a narrow data collection focusing on the status of the carers. The local authority should know of SGO and Adoption orders made in its area because of the reports it will have to prepare in relation to these proceedings, and could conveniently count the number of these reports and the outcome of the proceedings. It may be necessary to make specific arrangements with the court to be informed of outcome data. Such arrangements are unlikely to be self-executing, considerable time may be expended in securing that data is collected. On this basis it may only be cost effective to record details of the reports. There are no report requirements in relation to residence orders but the majority are likely to be made in care proceedings, which the local authority will have brought. It is unrealistic to expect local authorities to identify other family and friends carers with residence orders, or informal carers. The current state of the *Judicial Statistics* means that this is not a suitable source of information on orders to carers. If the Department wishes to obtain information about family and friends carers, it is advised to consider the use of Census questions or some other survey.

Specific policy questions

10 Is it helpful to refer to the need to appoint a manager with accountability for the family and friends policy (para 81)?

Yes

No

Not Sure

Comments:

11 Are the matters to be addressed in local policy appropriate? Please state where you think something is included inappropriately or is missing from the list.

Yes

No

Not Sure

Comments:

12 Is the framework for assessing family and friends foster carers (set out in chapter 5) appropriate? If not, please state why.

Yes

No

Not Sure

Comments:

The issue of assessment is crucial both in relation to the child's needs and the status of the carers. There must be a balance between having the same standards for, and demands on, family and friends carers as stranger foster carers and recognising the special benefits of family and friends placements (properly supported) which cannot meet the exacting standards of professional carers. There needs to be flexibility in doing this because the alternatives to friends and family care will themselves vary in the extent to which they can meet children's needs.

There are frequently difficulties in achieving timely approval where children are the subject of care proceedings, leading to attempts to work round regulations. The FJC is relieved that the period allowed for full assessment is now longer, and that there is the possibility of extension where approval assessments have not been completed. Guidance should not merely identify the time limits and the obligation to remove where they are not met, it should highlight the importance of having systems which ensure that placements are not disrupted because of the failure to work within in these time scales.

Para 182 A home visit will not necessarily provide the opportunity to observe relationships. Details of all adults in the household must be collected in order to obtain the necessary CRB checks.

13 Are the proposed national minimum standards in respect of family and friends foster carers the right ones?

Yes

No

Not Sure

Comments:

14 Do you think any additional national minimum standards are required in relation to family and friends foster carers? If so, what?

Yes

No

Not Sure

Comments:

15 Are the proposed areas for amendment to the Fostering Services Regulations 2002 the right ones?

Yes

No

Not Sure

Comments:

16 Do you think any additional amendments are required to the Fostering Services Regulations 2002 in relation to family and friends foster carers? If so, what?

Yes

No

Not Sure

Comments:

17 Is there anything else which it would be helpful to include in the guidance?

Yes

No

Not Sure

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply

Here at the Department for Children, Schools and Families we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

xYes

No

All DCSF public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DCSF consultations are conducted, please contact Donna Harrison, DCSF Consultation Co-ordinator, tel: 01928 794304 / email: donna.harrison@dcsf.gsi.gov.uk

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 18 June 2010

Send by post to: Michelle Gambell, Department for Children, Schools and Families, 1st Floor, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

Send by e-mail to: friendsandfamilyguidance.consultation@dcsf.gsi.gov.uk