

**Independent review of children's social care’s ‘*Case for Change’***

**Family Justice Council response – October 2021**

**Contact details**

fjc@justice.gov.uk

**The Family Justice Council’s role**

The primary role of the Family Justice Council is to promote an inter-disciplinary approach to family justice and to monitor the system. A non-statutory advisory body, it monitors how effectively the system, both as a whole and through its component parts, and delivers the service that the Government and the public need. It advises on reforms necessary for continuous improvement.

The Council’s membership reflects all the key professional groups working in the family justice system and is chaired by the President of the Family Division. It arrives at its views collectively and as such they do not necessarily reflect the views of its Chair.

**Contact and confidentiality**

The Council is happy to be contacted directly about its response, which need not be treated as confidential. The Council confirms that it gives its permission to analyse and include this response in the results.

**Preliminary comments on the executive summary**

The Family Justice Council (FJC) agrees with the basic premise that more and better needs to be done to improve the lives of children in the care system, both while they are in the care of the state, and subsequently. The ‘*Case for Change*’, in the executive summary (at page 12) makes the following points:

*Care too often weakens rather than strengthens relationships: many care leavers report having small support networks, 6% had no one providing emotional support and nearly one in ten young people only had support from their leaving care worker (Briheim-Crookall et al., 2020). Too often children are moved far from where they have grown up, are separated from their brothers or sisters, are forced to move schools, and have a revolving door of social workers. We are failing to build lifelong loving relationships around these children.*

*The “placement market” is broken: we need a pragmatic re-think with all options considered. The review is working alongside the Competition and Markets Authority (CMA) to look at this issue. We need to ask, if we were creating care today that was good enough for all our children, what would it look like?*

*Care for children who need secure accommodation - some of our most vulnerable children - reflects short term siloed thinking across government. Urgent action is needed given long standing issues and growing pressures on secure accommodation, although more homes are not a long term answer. There are particular issues for children in youth custody and government must step up its action to deliver on existing commitments.*

*The state is not a pushy enough parent when it comes to getting access to the support children in care need. We have repeatedly heard from parents, carers and care experienced adults that children entering care are not getting the mental health support they need. Education can be transformational for children and there is more to be done to support children in care to achieve their potential.*

The FJC would agree, particularly with regard to the acute problems with the availability of secure (and other specialist) placements, and – related to that – the availability mental health services and better educational support.

From the FJC’s multi-disciplinary perspective, the current market mechanisms are not providing an adequate or affordable supply of placements, particularly specialist placements, and the Competition and Markets Authority will not necessarily have the means to remedy that situation. The problems (and solutions) identified in the ‘*Munro Review of Child Protection: Final Report*’ (May 2011) remain unaddressed (as mentioned at page 13).

Ofsted, the existing regulatory body responsible for children’s homes, has a limited remit with regard to inspecting the financial position of children’s homes -

*Assessing financial viability*

*Regulation 47(1) of the Children’s Homes (England) Regulations 2015 state that the ‘registered provider must carry on the children’s home in such manner as is likely to ensure that the home will be financially viable for the purpose of achieving the aims and objectives set out in its statement of purpose’.*

*Inspectors are only expected to carry out a lay person’s assessment of the financial information. Their assessment of financial viability focuses on whether an applicant’s financial plans appear broadly realistic and are likely to result in, at a minimum, acceptable outcomes for children. If, during the course of a routine inspection, the inspector has concerns about the financial viability of a provider due to, for example, the poor repair of premises or the standard of day-to-day care or services, they should follow registration guidance.*

*Inspectors should explain to providers why they are requesting financial information during an inspection or at any other time.*

*The financial information Ofsted can request ranges from professionally produced business plans to a collection of accounts (including profit and loss accounts), records and financial forecasts (regulation 47(3) of the Children’s Homes (England) Regulations 2015).*

Ofsted Guidance - Social care common inspection framework (SCCIF): children’s homes (Updated 2 July 2021) <https://www.gov.uk/government/publications/social-care-common-inspection-framework-sccif-childrens-homes/social-care-common-inspection-framework-sccif-childrens-homes>

If the system remains market based (about which the FJC has serious concerns) then arguably that remit needs to be broadened in terms of funding, ownership and profit, and sustainability. Ofsted would also need to go beyond ‘*a lay person’s assessment of the financial information’.*

With regard to child mental health and tier 4 requirements, there are worrying gaps in provision, resulting in an urgent need for early help for children with mental health difficulties, especially in the context of the COVID-19 pandemic.

As a general point, while social workers initiate the process, the family courts decide on the removal of children from their families, within the framework of the Children Act 1989, and subject to the checks and balances of the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC). This is not a perfect system, as the number of appeals heard in the Court of Appeal in recent years attests. That said, the FCJ continues to regard to legal framework as having stood the test of time, with the Children Act 1989, and the paramountcy of children’s welfare, as a gold standard, copied internationally.

The executive summary goes on to point out that:

*The cost of children’s social care is escalating and funding is increasingly skewed towards acute services and away from effective help (Department for Education, 2021b). It is getting harder to meet children’s needs within the current system and if we don’t take urgent action to prevent this, costs will continue to rise and the situation of children will deteriorate. There is no situation in the current system where we will not need to spend more - the choice is whether this investment is spent on reform which achieves long term sustainability and better outcomes, or propping up an increasingly expensive and inadequate existing system. We don’t do enough to understand the collective costs of poor outcomes for children in contact with social care when we think about the case for investment.* (page 13)

The FCJ would agree with that, and notes that this has been the case for decades. Early help has to be priority. This is in the context of addressing underlying issues of increasing child poverty, social exclusion and deprivation. For there to be significant change, there need to be statutory duties owed to children that guarantee the provision of services, with democratic accountability within a children’s rights (UNCRC) based framework. This suggests a need for resources and also an examination of organisational culture.

The FJC would urge caution if it is thought that this should lead to a more centralised approach. Co-ordination between local authorities, to make best use of scarce specialised resources, makes sense, but local conditions vary (e.g. as between rural areas, towns, and large conurbations). Local authorities, accountable to their local populations, need to be responsible for local provision (see comment on chapter one, page 20, below).

There also needs to be caution in seeing social work practice as risk averse. Social work is properly about risk management, and that can be done constructively and positively as long as social workers are well trained and resourced, and not subject to unwarranted campaigns of public vilification. That is not to say that poor practice should be tolerated. It is essential that standards are high and that there should be (justified) public confidence in social work.

**Chapter One - comments**

As a general point, the FCJ would point to the need to differentiate between cause and effect, regarding outcomes (page 15). To give that some context, it is obviously the case that every child deserves to live within a loving, safe and stable family. That needs to be expressed in terms of rights – as in the ECHR and the UNCRC – with the paramountcy of children’s welfare as expressed in the Children Act 1989 s1. If the concerns are with systemic failure, as appears to be the case, then it is all the more important to understand the framework within which the system operates, including existing legislation, regulations, guidance and rights (including ECHR and UNCRC), and whether that framework is fit for purpose. If it is (as the FJC believes it to be), then the systemic failures must lie elsewhere, for instance in funding and resources, and how effectively system is operated (e.g. in terms of professional and management culture).

The FJC notes that the list of those influencing how the system responds to harm (at page 21) does not include lawyers (including local authority lawyers). Lawyers clearly do have an influence, and this needs to be addressed, in the face of systemic failure.

Regarding poor outcomes for children involved in the care system, there needs to be a distinction between cause and effect, with the root causes of the inequalities identified, in order to identify solutions. Relevant research includes:

* the Millenium Cohort Study: <https://cls.ucl.ac.uk/cls-studies/millennium-cohort-study/>
* projects and publications on Education and Welfare funded by the Nuffield Foundation: <https://www.nuffieldfoundation.org/research>
* the Joseph Rowntree Foundation, ‘Does money affect children’s outcomes?’: <https://www.jrf.org.uk/report/does-money-affect-children%E2%80%99s-outcomes> .

Regarding Links between child poverty and child protection proceedings / significant harm. You could refer to

- The work of Professor Paul Bywaters: https://pure.hud.ac.uk/en/persons/paul-bywaters

- The work of Professor Andy Bilson, e.g.: https://bilson.org.uk/child-protection/deprivation/?doing\_wp\_cron=1634480709.0202550888061523437500

- Publications from the Family Justice Data Partnership – a partnership between the Centre for Child and Family Justice Research, Lancaster University and Population Data Science, Swansea University, and funded by the Nuffield Family Justice Observatory: https://www.cfj-lancaster.org.uk/projects/fjdp. The most recent of these is The health of older children and young people subject to care proceedings in Wales (October 2021), which links deprivation, poor health outcomes for children and care proceedings.

- Projects and publications on Justice funded by the Nuffield Foundation: as above.

The FJC notes that the effects of deprivation are acknowledged at p23, and termed as *‘child welfare inequality’*. The FJC would refer the review to ‘*The Safety Net is Gone’*, a joint survey by the Child Poverty Action Group (CPAG), the Child Welfare Inequalities Project (CWIP) and the Association of Directors of Children’s Services (ADCS), published August 2020 -

<https://cpag.org.uk/sites/default/files/files/policypost/The-safety-net-is-gone.pdf>

In this context, the FJC suggests caution in the use of increasingly loaded phrases such as ‘levelling up’, while acknowledging the importance of holding government to account in terms of its declared agenda.

With regard to the criminal exploitation of children and young people, the FJC notes that this cuts across the population, with children from stable, better off families also affected. That suggests a need for a public health ‘whole population’ approach, similar to that used in Scotland in relation to knife crime (<https://www.gov.scot/policies/crime-prevention-and-reduction/violence-knife-crime/> ). A holistic approach is also needed (e.g. in relation to drugs, as advocated in Professor Dame Carol Black’s independent review - <https://www.gov.uk/government/collections/independent-review-of-drugs-by-professor-dame-carol-black> ).

The National Association of Guardians ad Litem and Reporting Officers’ (NAGALRO) autumn 2019 conference focused on child criminal and sexual exploitation, and some of the papers for that conference are attached, with thanks to NAGALRO for permission to share this, and credit due to the contributors whose slide presentations are attached:

Lucy Knell-Taylor, London Programme Manager, Redthread

John Pitts, Vauxhall Professor of Socio-legal Studies, University of Bedfordshire Institute of Applied Social Research

James Houghton, Service Lead Specialist Adolescent Services and Jenny Brennan, Child Protection Advisor, West Sussex County Council

Page 20 states that ‘Ultimately the public (alongside the media) set the tone of our expectations about how the state should intervene in family life.’ That is a broad statement, and care needs to be taken in understanding public interest in the care system, knowledge of the system and how it works, the effect of media reporting, and the importance of local accountability.

Page 21 refers to ‘*The way that different risk factors translate to a response is uneven and in some areas we are prescriptive about how the state should intervene (e.g. in stating that every child on remand should be looked after), whilst in other cases we leave a significant amount of local discretion (to interpret what should be considered significant harm).*’ The FCJ suggests that the review factors in the legal definition in the Children Act 1989 s31 of ‘*significant harm’*, and the function of the courts in interpreting and understanding the concept of ‘*significant harm’*.

At page 21, there is reference to finite resources, and a ‘…*piecemeal approach [that] can be problematic in distorting how children’s social care is able to respond to the differing needs of children and families.*’ As mentioned above, it is necessary to consider the differing profiles of local authorities, including local demographics, council tax and commercial rates bases and revenues, employment levels, health, etc. Again, it is also necessary to be clear about the Children Act 1989, and the role of the judiciary in applying the law, and importance of the family justice system in providing checks and balances in respect of the power of the state.

P 22 – 23 refer to poverty and deprivation. Existing research that examines the links between child poverty and child protection proceedings /significant harm includes:

* The work of Professor Paul Bywaters: <https://pure.hud.ac.uk/en/persons/paul-bywaters>
* The work of Professor Andy Bilson, e.g.: <https://bilson.org.uk/child-protection/deprivation/?doing_wp_cron=1634480709.0202550888061523437500>
* Publications from the Family Justice Data Partnership – a partnership between the Centre for Child and Family Justice Research, Lancaster University and Population Data Science, Swansea University, and funded by the Nuffield Family Justice Observatory: <https://www.cfj-lancaster.org.uk/projects/fjdp> . The most recent of these is The health of older children and young people subject to care proceedings in Wales (October 2021), which links deprivation, poor health outcomes for children and care proceedings.
* Projects and publications on Justice funded by the Nuffield Foundation: as above.

Page 23 states:

*We have now reached a point where the weight of evidence showing a relationship between poverty, child abuse and neglect (Bywaters, Bunting, et al., 2016), and state intervention in family life is strong enough to warrant widespread acceptance. The acceptance of this significant impact of deprivation should lead us away from framing the differences as ‘variations’ in children’s social care intervention and instead frame them as ‘child welfare inequalities’. An equivalent shift in framing took place in the noughties with the widespread recognition of, and new found attention on, educational inequality. This terminology now permeates the education field in England.*

The FJC would agree that, and with the following paragraph, also on page 23:

*The review rejects the notion that a contributory causal link leaves the children’s social care system powerless. The fact that services can either deepen these inequalities or can alleviate them should grip us. Anyone concerned with social justice who is working in children’s social care needs to take responsibility for leading a system that has agency and power to tackle these inequalities.*

**Chapter One question and answer**

 ‘What do you think the purpose of children’s social care should be ?’

Answer – to achieve the best possible outcomes for all ‘looked after’ children as well as all children otherwise involved with children’s services (e.g. as children in need or children subject to child protection plans). That also includes the range of services available, how those services are delivered, and the range of placements available for children who do have to be cared for outside their families (bearing in mind the current, acute difficulties in finding placements for older children with complex needs).

**Chapter Two - comments**

Page 26 refers to the community as source of support – but this still has to be framed in terms of rights and guaranteed levels of support, as support from communities can be haphazard and unpredictable.

Regarding support and investigation (page 27), ideally there should be more support, rather than investigation – but this could be both/and, rather than either/or, with a balance struck. An element of investigation is needed to understand what is happening within families, the degree of risk, and what form of support would work best.

The reference at page 27 to levels of deprivation, regarding links between that and the likelihood of intervention, is important. Recent research has suggested that, paradoxically, families living in more affluent areas are more likely to experience intervention:

*In England, the evidence suggests that local authorities covering comparatively affluent areas tend to spend more on children’s services relative to need than in deprived areas although spend per child is usually lower. Overall, as a result, local authorities covering more affluent areas tend to intervene more readily using high end, expensive, more coercive forms of intervention. This is a structural pattern between local authorities not a random lottery or just a product of local leadership styles or values. We called this the inverse intervention law. It means that increasing funding without tackling the social determinants of demand and the focus of child welfare policies could result in more not fewer children in care or on protection plans*

(The Child Welfare Inequalities Project: Final Report, Bywaters et al., 2020, <https://www.nuffieldfoundation.org/wp-content/uploads/2019/11/CWIP-Overview-Final-V4.pdf> ).

That is the context in which the following paragraph, at page 28, needs to be understood:

*‘Part of the reason for a lack of support might be because the help which families need to turn things around is not available. Local services have experienced increasing demand in recent years, particularly at the acute end of services. Spending has shifted towards acute services and meeting statutory duties. Between 2012/13-2019/20, spending on non-statutory children’s services decreased by 35% in real terms (Department for Education, 2021b).13 Local authorities have finite budgets and have responded to financial pressures by reducing spending on non-statutory children’s services and increasing spending on statutory social work (National Audit Office, 2019). In 2017/18, the average local authority spend on a Child in Need intervention ranged between £566 and £5,166, showing a significant variation in the support received by families (National Audit Office, 2019).’*

It might assist if the comparison is made with the history of Sure Start and children’s centres, and the effects of cuts in public spending – see

*Sure Start (England)*, Bate & Foster, <https://commonslibrary.parliament.uk/research-briefings/cbp-7257/>

‘*The impact of children’s centres: studying the effects of children's*

*centres in promoting better outcomes for young children and their families*

*Evaluation of Children’s Centres in England* (ECCE, Strand 4), December 2015, Pam Sammons et al

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/485347/DFE-RB495_Evaluation_of_children_s_centres_in_England__the_impact_of_children_s_centres_brief.pdf>

The FJC can agree that the culture of social work needs to be addressed, as well as resources (page 30), specifically:

‘*In some cases, relationships between families and social workers can be hostile or based on mutual suspicion (Ferguson et al., 2020). Some families have also reported “cold hearted” encounters with professionals which damages the relationship, leading to resistance from families which then inform judgements about risk and family capacity to care for their children (Morris et al., 2018). In the words of one parent from our engagement events: “professionals can judge parents and families before they know the facts. Parents are asking for help and they need to be commended for that.” ’*

With regard to the family safeguarding model (page 31), a parallel can be found in the Family Drug and Alcohol Court (FDAC) model of therapeutic jurisprudence, which also uses a multi-disciplinary and supportive approach. NB The FDAC approach is demanding and challenging of parents, and is not an easy option, but research suggests better outcomes. See <https://fdac.org.uk/what-does-research-say-about-fdacs/> (FDAC referred to at p45 – NB although research suggests significant costs savings as a result of use of FDAC model, local authorities have to commit to funding FDAC teams in advance and budgetary constraints affect take up).

With regard to page 32 – 33, and the issue of the effectiveness of early help, if specialist practitioners are not available able to work with vulnerable children, that is put in the context of concern at the intrusiveness of assessment. One approach would be using universal services, as exemplified by Sure Start, as a way of encouraging families to engage, without stigma, leading to the delivery of specialist services.

NB there has to be a balance between support and safeguarding, and recognition of the risk of ‘disguised compliance’.

The FJC can agree on need for better integration and consistency of services (page 34) e.g. with regard to the distinction between early help and Children in Need plans, and the fragmented central government initiatives as cited. NB as suggested in the footnote to p35, the legal framework for this exists within the Children Act 1989, the Children Act 2004, and the Children Act 2006.

At page 36, it is suggested that Family Help should have ‘…*porous boundaries and access to the support should not be dependent on a statutory assessment’* but for local authorities, the issue will be resources, and properly understanding nature of each family’s needs, level of risk, etc. It is inevitable that there will be a range of needs and levels of risk, and local authorities have to be able to manage that.

**Chapter Two questions and answers**

• What is the role of the Children’s Social Care system in strengthening communities

rather than just providing services?

It is necessary to be clear about the functions of children’s services and their statutory duties (which will inevitably dictate core functions), especially if budgets are under pressure. It is also necessary to be clear about potential savings (financial and otherwise) that could be achieved by supporting communities. There is likely to be a limit to what the children’s social care system can achieve, in any event. The strength of communities is a matter for the whole of government, central and local.

• How do we address the tension between protection and support in Children’s Social Care that families describe? Is a system which undertakes both support for families and child protection impeded in its ability to do both well?

Professionals need to be open and honest from the outset regarding their roles, with children’s welfare as their paramount concern (in line with the Children Act 1989, s1), alongside an approach centred on children’s rights (based on the UNCRC). Welfare needs to be understood broadly, including, for instance, the harm caused by removing children from their families, which has to be balanced against the harm of leaving them there. For social work to be effective, there needs to be time and opportunities for direct work, and reflective practice. It would be artificial to split support from child protection. As well as improving resources, more could be done to work on the culture of social work, including knowledge and skills (as recommended by the DfE 2011 Munro Review of Child Protection: Final Report

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/175391/Munro-Review.pdf> )

• What do you think about our proposed definition of family help? What would you include or exclude?

The universal nature of the definition could avoid stigmatising those families that need help. However, the suggestion that there should be ‘*porous boundaries and access to the support should not be dependent on a statutory assessment’* would probably create difficulties for local authorities. The issues would be in terms of resources, and properly understanding the nature of each family’s needs, level of risk, etc. Inevitably, there would be a range of needs and levels of risk, and local authorities would have to be able to manage that.

**Chapter Three comments**

At page 37, the FJC would agree with the following:

*‘In the previous chapter, we set out how we are assessing and investigating more families. Effective and consistent decision making is crucial to both reducing these numbers and instigating decisive action where it is necessary. We all need to be comfortable that uncertainty and risk are features of child protection work and risk cannot be eliminated in children’s social care (E. Munro, 2011). Attempting to fully eradicate risk leads to other forms of harm including disruptive over-investigation, severing important relationships and children being removed unnecessarily. In managing this balance between under and over intervention, practitioners have to analyse and integrate a broad range of usually incomplete information, often in the context of high-anxiety and in a system and organisation that do not help hold that risk. We need to build a system that provides social workers with the skills, knowledge and support to make these difficult decisions with confidence.’*

The FJC would also agree that there is variation in terms of different local authorities’ internal thresholds for intervention, which can be difficult to understand in terms of children’s welfare.

The FJC strongly agrees that the Munro report needs to be acted on, and is of the view that that would deal with the points raised in this initial report.

With regard to page 39 and comments on the role of the courts, it is stated that ‘J*udges sitting in the Family Division are expected to complete training through the Judicial College, however it is not clear whether this provides the right level of knowledge on topics such as child development that are important in decisions on the welfare of the child (Judicial College, 2020)*.

The Judicial College recognises the importance of child development, and training is provided to all newly appointed judges who are authorised to undertake Children Act work, specifically relating to brain development and early experiences, and how that may impact on a child’s functioning. The nature and extent of this training is kept under review.

Also on page 39, it is stated that *‘…social workers can inappropriately use attachment theory in assessments…*’ (citing Silman, 2016)

It is acknowledged in the family courts that social workers need a working knowledge of attachment theory but are not the experts on attachment theory, and are not qualified to assess disordered attachments (that is a task undertaken by psychologists and child and adolescent psychiatrists).

With regard to page 40 and poor risk assessment and management of risk, this highlights the risk of disguised compliance (e.g. with regard to written agreements).

Also with regard to page 40, in terms of information sharing, data protection rules are sometimes used to limit sharing, and the recent decision in *Harcus Sinclair LLP (Respondent) v Your Lawyers Ltd* (Appellant) UKSC 2019/0098 - <https://www.supremecourt.uk/cases/uksc-2019-0098.html> - complicates the position regarding solicitors’ undertakings, with police services asking for personal undertakings from individual solicitors in respect of disclosure of police material into family proceedings. Police services are also usually reluctant to share all the material they hold if they are still investigating a case.

At page 41 – 42, regarding child criminal exploitation (CCE), it is agreed that the ‘*current approach is not equipped to manage this growing challenge’*. The legal framework, in terms of establishing the Children Act s31 threshold criteria of significant harm, can work if the child can be shown to be beyond parental control, but the essential point is that CCE is frequently extra-familial. Anecdotal evidence suggests that county lines increasingly is involving children and young people who are perceived to be unlikely to be involved in any form of crime (e.g. white, middle class) to avoid attracting (or to deflect) attention. The National Association of Guardians ad Litem and Reporting Officers (NAGALRO) and the contributors have generously agreed to share the attached papers/summaries from their autumn 2019 conference on CCE and child sexual exploitation (CSE).

With regard to page 43, children might be moved in the hope that they will be safer away from home, but there is a chronic lack of suitable placements, including therapeutic residential placements (as is evident from the string of Family Division cases concerning this).

At page 44, it is stated that:

*‘Courts do often decide that children should be removed in line with the local authority position but in a significant minority of cases this does not happen. 88% of standalone supervision orders to support family reunification between 2010/11 and 2016/2017 resulted from local authority applications for care orders (Harwin et al., 2019). As at March 31st 2020, 7% of all Children Looked After were living with their parents – although not all of them would be placed at home under a care order (Department for Education, 2021e). These responses can be the result of a court acknowledging the threshold for an order has been met and that there was significant risk, but the family had not been given the support or opportunity to demonstrate their parenting capacity so as to avoid the need for the court to make a public law order.’*

In some cases, no order is made, even though the s31 threshold criteria have been met. The ‘no order’ principle applies in all cases: no order will be made unless the court considers that doing so would be better for the child than making no order at all (Children Act 1989, s1(5) ) . If there is continuing risk but it is manageable, the court can make a supervision order, for instance if parents respond positively during proceedings (e.g. successfully undergoing drug/alcohol rehabilitation, dealing with issues concerning domestic abuse, etc.), when they had not responded before. That said, if early help, and/or pre-proceedings work is not adequate, then it may be that the making of a supervision order does indeed indicate a previous lack of support. Further research assist.

NB Care orders at home are unusual because if the circumstances of a case merit the making of a care order, that indicates both the existence of significant harm (or risk of significant harm) and the need for a care order – so that the local authority has parental responsibility – as a reasonable and proportionate order. The local authority has to be confident that it can manage future risk, and the court has to be satisfied that placing a child at home in such circumstances would be in the welfare interests of that child.

The use of care proceedings also has to be seen in terms of the checks and balances provided by the family justice system. In some cases – classically, cases of non-accidental injury to infants – the only realistic way of resolving the matter is to issue care proceedings, and conduct a fact finding hearing to establish the likely cause of the alleged harm. There is also issue of access to specialist lawyers – legal aid for pre-proceedings work is very limited, and not available at all to children (with a basic fixed fee of £132, and means and merits tested unless very strict criteria are met). Anecdotally, that has led to the limited availability of solicitors carrying out this work. In contrast, children and parents (as well as anyone else with parental responsibility) are entitled to non-means, non-merits legal aid if care proceedings are issued. That needs to change if the legal position of parents and children are to be protected at the earliest possible stages of local authority intervention. The work needs to be done by specialist solicitors, to ensure the quality of that work.

With regard to more work being needed ‘to promote problem solving, non-adversarial approaches before children and families’ (page 46), the FDAC National Unit has considered how the FDAC approach could be applied pre-proceedings. This includes a 2017 review of cases in which the London FDAC specialist team worked with parents in pre-proceedings, with interviews with FDAC team members, local authority staff and private practice legal practitioners. The review posed the following questions:

• What are the advantages of FDAC working in pre-proceedings?

• In what way, if at all, does FDAC specialist team involvement in pre-proceedings create problems for the FDAC model?

• In the light of answers to the above two questions, what changes might be made to FDAC work in pre-proceedings?

The main findings were summarised as:

• One third of the cases worked with by the team in the pre-proceedings period were diverted from court and two thirds went into proceedings.

• The average time in pre-proceedings for all cases was 13 weeks, with a range from 1 week to 46 weeks.

• Cases which went into proceedings spent on average 11 weeks in pre-proceedings, overall slightly less time than those cases which were diverted.

• Cases which went into proceedings after pre-proceedings work lasted on average 25 weeks whereas the average time for cases where FDAC became involved at the start of proceedings was 34 weeks.

• Outcomes of cases worked with in pre-proceedings were similar to outcomes of cases where involvement with FDAC began in court: in around half the cases children stayed at home or returned home, care orders were made in around one third of cases, and SGOs were made in between one fifth and one quarter of cases.

• In all cases, whether FDAC had worked with the family in pre-proceedings or not, cases where children returned home lasted on average longer than those cases where a care order or SGO was made.

• In those cases where children returned home, FDAC involvement with the family was on average longer in cases worked with in pre-proceedings than in those cases where FDAC involvement began at court, 48 weeks compared with 41 weeks.

• Advantages and disadvantages to involving the FDAC team pre-proceedings were identified.

• Clear protocols between FDAC teams and local authorities about timescales of pre- proceedings work are essential.

• Cases where FDAC involvement in the pre-proceedings period was identified as particularly helpful included pre-birth cases.

• The longer period of time for parents to demonstrate capacity to change and the possibility of diverting cases from court altogether suggests that it may be helpful for FDAC teams to begin work in the pre-proceedings period.

See <http://fdac.org.uk/wp-content/uploads/2020/04/Pre-proceedings-in-the-London-FDAC.pdf>

Incidentally, the FDAC model included the use of parent mentors, i.e. parents who have been through the FDAC process, who can support parents involved in on-going proceedings.

It is important to remember the opportunities to work with mothers who lose the care of their children, immediately after care proceedings end (when support and services are so often withdrawn) – see ‘Vulnerable Birth Mothers and Recurrent Care Proceedings’, Broadhurst et al

<https://www.nuffieldfoundation.org/sites/default/files/files/rc-final-summary-report-v1_6.pdf> - (referred to at page 51 – 52). NB at least one London local authority has withdrawn from the Pause programme, apparently for budgetary reasons.

Regarding the 26 week time limit, it has been clear since before the enactment of that provision, that extensions would be granted if necessary to enable the court to resolve the proceedings justly (see the Children Act 1989 s32(5) ). Guidance was provided in *Re S (A Child)* - [2014] EWCC B44 (Fam) - <https://www.bailii.org/ew/cases/EWCC/Fam/2014/B44.html>

With regard to page 47 and the Children Act 1989 s20, this says (emphasis added):

(1) Every local authority ***shall*** provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—

(a)there being no person who has parental responsibility for him;

(b)his being lost or having been abandoned; or

(c)the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

So this is a duty placed on local authorities, not a discretion. A child accommodated using s20 becomes a ‘looked after’ child with all the statutory duties that places on local authorities (e.g. regular reviews chaired by an independent reviewing officer). The child’s wishes and feelings must, so far as is reasonably practicable and consistent with the child’s welfare, be ascertained and given due consideration. A local authority may not provide accommodation for a child if anyone who has parental responsibility for him/her objects, and is willing and able to provide accommodation for the child, or is willing and able to arrange for accommodation to be provided. That is rather different from someone with parental responsibility consenting to s20 accommodation, and this was clarified by the Supreme Court in *Williams and another (Appellants) v London Borough of Hackney (Respondent)* [2018] UKSC 37 (<https://www.supremecourt.uk/cases/uksc-2017-0037.html> ). Historically and anecdotally, there can be issues with local authorities using s20 for prolonged periods of time when a case ought to be the subject of care proceedings, so that definitive decisions are made.

With regard to page 49, the FJC would agree, regarding the (lack of) support for kinship carers, and the limits placed on available support by the way in which the rules operate (e.g. regarding special guardianship support). This is despite the decision in 2001 that local authorities should not financially discriminate against foster carers who are related to the children they foster (*R (on the application of L & Ors) v Manchester City Council* [2001] EWHC 707 (Admin) (28 September 2001) <https://www.bailii.org/ew/cases/EWHC/Admin/2001/707.html> ). A further case in 2013 underlined this, declaring that the policies that discriminated against family carers in respect of the reward/fee elements of the payment made to carers, were unlawful (*R (on the application of X) v London Borough of Tower Hamlets* [2013] EWHC 480 (Admin) - <https://www.bailii.org/ew/cases/EWHC/Admin/2013/480.html> ). Logically, that suggests that financial support for any carer should be based on needs, not the relationship between the child and the carer.

Regarding the stability of special guardianship, see ‘Special guardianship: a review of the English research studies’, Harwin and Simmonds -

<https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/05/Nuffield-FJO_Special-guardianship_English-research-studies_final.pdf>

With regard to page 50, the FJC would agree that adoptive parents need support, with the crucial recognition that being an adoptive parent requires particular skill, in order to provide ‘therapeutic parenting’ (see <https://www.adoptionuk.org/blog/therapeutic-parenting-in-adoption> )

**Chapter Three questions and answers**

• How do we raise the quality of decision making in child protection?

Better training and resources.

• How do we fill the accountability gap in order to take effective action to keep teenagers safe?

Much better multi-agency working and potentially a public health approach (similar to that used in Scotland to reduce knife crime - <https://www.gov.scot/policies/crime-prevention-and-reduction/violence-knife-crime/> )

• What can we do to support and grow kinship care?

More effective consultation and better, tailored support with realistic financial support.

• Given the clear evidence of positive outcomes and value for money of programmes that support parents at the edge of care and post removal why aren’t they more widely available and what will it take to make this the case?

Genuine support from those in political power and genuine and effective co-operation between government departments, and between central and local government, as well as sufficient resources and funding.

**Chapter Four comments**

Regarding page 54, it is unarguable that all children should grow up feeling safe and secure and knowing that they are loved unconditionally, but is it realistic to say that unconditional love will be part of the care provided by the state to those children who cannot stay in their families and are not adopted ? International comparisons might assist.

It is stated, at page 55, that ‘*Taken together, the professionals running various parts of the system do not seem to recognise the profound impact each change, particularly when that change represents a severing of a relationship, has on children entering care and as they grow up.’*

However, the Children Act 1989 welfare checklist (s1(3)(c)) says that the court shall have regard to the likely effect on the child of any change in his circumstances. So change has to be considered in judicial decision making, and therefore in professional decision making, as long as there are proceedings ongoing. Added to that, s34(1) places a duty on local authorities to allow reasonable contact for children in their care and the children’s parents (noted further on in this chapter). Research has also established the importance of sibling contact for children in care and placed separately from their brothers and sisters. The legal and theoretical frameworks are there, so the question arises as to why they are not always acted on.

The proposals for improving children’s experiences in care make sense, but have significant resource implications.

• Keeping children close to their community: children are moved away because of shortages of suitable placements (see <https://www.communitycare.co.uk/2020/11/12/fostering-capacity-still-nowhere-near-enough-meet-demand-despite-small-rise-warns-ofsted/> )

• Keeping children with their brothers and sisters: there can be valid welfare reasons for placing siblings separately, for instance if the sibling relationship has been seriously damaged by the children’s experiences, but research firmly points to the importance of the sibling relationship as the most enduring relationship anyone can have and its importance in promoting children’s welfare (e.g. ‘*Siblings, contact and the law: an overlooked relationship?*’ Monk & Macvarish,

 <https://www.nuffieldfoundation.org/sites/default/files/files/Final%20Siblings%20Summary.pdf> ) Again, difficulties can be caused by insufficient available placements (including adoptive placements) able and willing to take sibling groups (this is referred to at page 60 of this report).

• Reliable homes, schools and social workers: again, there need to be the resources to maintain existing placements and establish stable workforces.

• Nurturing ongoing relationships with family: longitudinal studies have shown the importance of contact, if this can be managed safely (bearing in mind the risks created by social media), including in the context of adoption (e.g. the work done by the "Contact After Adoption" Team, based at the Centre for Research on Children and Families, University of East Anglia, <https://www.uea.ac.uk/groups-and-centres/centre-for-research-on-children-and-families/contact-after-adoption> ). Making this work requires local authority support including skilled contact supervisors.

• Growing children’s network of relationships: again, this requires placement stability, which in turn has resource implications.

With regard to page 58, the FJC would agree that there are not enough homes available in the right places – again, this raises questions about resources. The report points to the problems with the market for care and private provision. The market based ‘for profit’ approach regarding foster care and residential placements (particularly specialist and secure placements) has failed to meet demand while placing unsustainable financial burdens on local authorities, with a risk of failure on the part of providers (as happened in adult care services with Southern Cross – see London Borough of Southwark’s *‘Report into the collapse of Southern Cross Care Homes’*, June 2012 <https://moderngov.southwark.gov.uk/mgConvert2PDF.aspx?ID=29416> ). Again, there is indeed a need for this to be radically reconsidered.

As suggested by the foster carers quoted in this report at page 59, support is essential for foster placements to work and the supply of foster carers to be at least maintained (and ideally increased).

With regard to residential care (page 60), the FJC would agree that there can be widely varying standards, and that a child should only be placed in residential care if that is the best option for that child, not because it is the only option left. International comparisons are available, e.g. ‘*Internationally adopted children's general and adoption-specific stressors, coping strategies and psychological adjustment’*, Marta Reinoso et al

<https://onlinelibrary.wiley.com/doi/full/10.1111/cfs.12112>

and *Introducing Social Pedagogy Into Residential Child Care in England*, Bengtsson et al, January 2008 <http://www.sppa-uk.org/wp-content/uploads/2016/10/introducing_sp_into_rcc_in_england_feb08.pdf>

With regard to pages 62-63, the FJC would agree that the use of unregulated accommodation for children under the age of 18 should come to an end, with urgent action to introduce a regulatory regime that will protect children and promote their welfare interests, including helping with the transition to adult independence. However, given the general lack of suitable specialist accommodation, there may be unlooked for difficulties after the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 (SI 2021/161) take effect on 9 September 2021, banning the placement of children in care aged under 16 in unregulated accommodation . In *Re W (Young Person: Unavailability of Suitable Placement)* [2021] EWHC 2345 (Fam), Mrs Justice Knowles stated that a young person’s placement would not only potentially become illegal but it would be unlawful when those Regulations become effective, and it will be ‘considerably harder’ to find bespoke placements for young people with urgent needs. <https://www.bailii.org/ew/cases/EWHC/Fam/2021/2345.pdf>

At the same time, using the High Court’s inherent jurisdiction to permit children to be deprived of their liberty, to enable an unsuitable placement to continue when nowhere else is available, is not the answer (the latest case in point being *Nottinghamshire County Council v LH and ors* [2021] EWHC 2584 (Fam)

 <https://www.judiciary.uk/wp-content/uploads/2021/09/Nottinghamshire-CC-v-LH-and-others-judgment.pdf>

(see also page 16 below)

With regard to page 64 and secure accommodation, the statutory basis for placing a child in secure accommodation - the Children Act 1989 s25 – is clear and is permissive only, for a period of time set by the court. The Children Act 1989 Guidance and Regulations, Volume 1: Court Orders (2014), paras 40–42 underlines the gravity of such orders:

‘*Restricting the liberty of a child is a serious step that can only be taken if it is the most appropriate way of meeting the child’s assessed needs. A decision to place a child in secure accommodation should never be made because no other placement is available, because of inadequacies of staffing in a child’s current placement, or because the child is simply being a nuisance. Secure accommodation should never be used as a form of punishment … This does not mean, though, that restriction of liberty should only be considered as a “last resort”. Restricting the liberty of a child could offer a positive option. A decision to apply for an order under s 25 of the Act should be made on the basis that this represents the best option to meet the particular needs of the child. The placement of a child in a secure children’s home should, wherever practicable, arise as part of the local authority’s overall plan for the child’s welfare … For some children a period of accommodation in a secure children’s home will represent the only way of meeting their complex needs, as it will provide them with a safe and secure environment, enhanced levels of staffing, and specialist programmes of support. A secure placement may be the most suitable, and only, way of responding to the likelihood of a child suffering significant harm or injuring themselves or others.’*

So even if the criteria are met and a s25 order is made, a local authority may only place a child in secure accommodation for so long as that is necessary and even if an order still has time to run, if the criteria no longer apply, it would be unlawful to keep the child in secure accommodation.

The issue again is to do with scarce resources. There have been regular series of cases in which Family Division judges have been faced with the chronic lack of secure accommodation, such as *Lancashire County Council v G (Unavailability of Secure Accommodation)* [2020] EWHC 2828 (Fam) <https://www.bailii.org/ew/cases/EWHC/Fam/2020/2828.html> ). In relation to youth justice secure accommodation, the problems are the same, to the extent that the Court of Appeal has now declared that one London local authority (as at December 2018) was in breach of its duty under section 21(2)(b) of the Children Act 1989 to have a reasonable system in place to respond to requests by the police for secure accommodation under section 38(6) of Police and Criminal Evidence Act 1984 - *R (On the Application Of AR (A Child)) v London Borough of Waltham Forest* [2021] EWCA Civ 1185 (<https://www.bailii.org/ew/cases/EWCA/Civ/2021/1185.html> )

With regard to page 67, the FJC would agree that children’s voice must be heard (in accordance with UNCRC article 12). The FJC would also agree that there need to be large scale and urgent improvements to access to mental health services for children.

The FJC would agree that improved provision and opportunities in respect of education is essential and urgently required (page 68).

The FJC would agree that the support available to children (including those reaching adulthood and leaving care) has to depend on their individual needs, and not be dictated by their age or the type of placement in which they are/have been living (page 69).

The FJC would agree (page70 – 71)that there is a need for public education and awareness in respect of the experiences of children and young people in care, and it would be worth exploring the possibility of protected status. Ready access to accurate records for those who have experienced being in care should be a matter of course.

**Chapter Four questions and answers**

• If we were creating care today that was good enough for all our children what would it look like?

Placements that are tailored to individual needs, properly supported.

• How can care help to build loving lifelong relationships as the norm?

Very difficult to achieve outside family placements but stable long term placements, with proper support, is likely to be essential.

• What changes do we need to make to ensure we have the right homes in the right places with the right support? What role should residential and secure homes have in the future?

Resources need to be available with a tailored approach, and that could include residential and secure homes.

**Chapter Five comments**

With regard to page74, it is stated that ‘*Throughout the system there are opportunities for things to both work better as well as cost less - avoiding parents having repeat removals, taking fewer children into care by supporting families where possible, making better use of kinship arrangements, avoiding children entering costly residential and secure placements, curbing profit and reducing the number of agency social workers.’*

This may well be right, but it is likely that achieving these improvements would require significant investment. The FJC would agree that the cost of that has to be set against the costs - to individuals and to society - of not making that investment.

The FJC would agree that a 'siloed' approach to multi-disciplinary working is counter-productive (page 76), but this is at least partly the result of different agencies operating under budgetary constraints.

The FJC would strongly agree that the recommendations of the Munro report need to be fully implemented (page 77), including with regard to direct work with families, and the inspection regime.

The FJC would strongly agree that it is essential to train and retain skilled social workers (page 78).

At page 81, it is stated that:

 ‘*A very significant amount of the problems we are diagnosing in this document have been exposed and described again and again with sensible and considered recommendations for change. Yet actually achieving change that improves the lives of children and families has been stubbornly difficult.’*

The FJC would agreed.

**Chapter Five questions and answers**

 • How can we strengthen multi-agency join up both locally and nationally, without losing accountability?

Better resourcing (with the aim to ending any ‘silo’ approaches). There also needs to be a coherent and cohesive framework, with national standards, but local, democratic accountability.

• How do we free up social workers to spend more time in direct practice with children and families and reduce risk aversion?

Better training and resourcing, and more effective retention of staff.

• How can monitoring and inspection make the most difference to children’s and families’ experiences and engender greater freedom and responsibility in the workforce?

The inspection framework needs to include an element of support so that there is openness about failures or deficiencies, in the knowledge that the aim of inspection is to identify such problems and help resolve them.

• What will need to be different about this review’s recommendations compared to previous reviews so that they create a tipping point for improvement?

Effective implementation – and perhaps the most useful aim the review could have would be to ensure the implementation in full of the Munro report.

**General comments**

The legal framework – particularly the Children Act 1989 – is not the problem, and there is ample research information on the family justice system. However, there are issues with how the system is actually working, and more and better data are needed. There are issues with public sector IT e.g. HMCTS data is limited, and recent major research (led by Prof Karen Broadhurst) has relied in Cafcass data sets and SAIL.

**Family Justice Council**

27 October 2021