

**APPG INQUIRY ON LEGAL AID
WRITTEN EVIDENCE SUBMISSION – LAWYERS IN LOCAL GOVERNMENT
(2204002)**

1) What are the main challenges (and the scale of the problem) faced by kinship carers and prospective kinship carers in accessing legal support, including advice and representation:

- **prior to the local authority starting any formal pre-proceedings process**
- **during the formal pre-proceedings stage**
- **when a child is subject to care proceedings**
- **when a child is subject to any other legal proceedings?**

Kinship Carers are much needed by Society. We know children's outcomes are far better when they remain cared for within their own family where they have a sense of belonging and love. It is true that kinship care is not always successful and foster carers offer good quality care and love, but research is clear that children progress better in life where they remain within their own families.

Kinship carers are often asked to take on the responsibility of caring for a child with limited notice. Care proceedings are now mandated to conclude within 26 weeks and kinship carers may not be informed at the start of a case even though parents will be asked to name viable alternative carers before proceedings commence.

In the early stages this is often because parents struggling to care, do not want their families informed of their difficulties and may only turn to kinship carers when there is no alternative and a final realisation that the Local Authority seek orders for their children to come into care. Local Authorities recognise the importance of the family and friends' network but before proceedings start, when they are actively working with families to try to make changes the children need, they cannot share information with others without the parents' consent unless there is an immediate safeguarding reason to override this. They seek to support Kinship carers and hold Family Network meetings and Family Group Conferences to connect with family, but they do not always get full attendance and even then, families are not always aware of how serious the situation is, especially if the parents minimise their difficulties. They naturally speak to the parents directly and they do not always get full information or the truth even when they ask.

There are kinship carers who do understand the difficulties and have already taken on the mantle of care but seek help to regularise their situation under the law so they can access benefits, parent those children, and seek and obtain the proper support they need. They are often trying to hold families together, having to make unplanned and significant changes to their own lives and deal with the emotional challenges as well as navigate often complex legal proceedings.

Legal Aid is not helping the situation. Currently legal aid is not available to everyone who needs support. In care cases it is available to parents who risk losing their child but not to family members offering to care, even if they are not supported by the parents to do so. In non-accidental cases they may even face allegations without legal support.

If kinship carers are asking for a special guardianship order, most Local Authorities will fund some initial legal advice for carers to ensure they understand the commitment they are making and they will provide kinship support, but carers often find it difficult to navigate the legal process and the decisions the court makes especially as Court are often parallel planning different options at the same time. Further funding might be found if there is a particular point that needs addressing or overall the family agree with the parents and it is legalisation of an existing arrangement but even then positions can change as parents struggle with the emotions of being unable to raise their own children themselves for various reasons such as drug or alcohol addiction, learning difficulties, mental health problems or unable to separate from a violent partner despite the support offered.

If a Local Authority does not recommend a kinship carer through assessment of them, then the potential care would not be funded as essentially the Local Authority would be expected to divert funds from direct work with children to funding a person to fight their decision not to support the kinship carer. Local Authorities do try to give people a fair opportunity, but budget limitations also make them pragmatists. There are pro-bono organisations who might represent them but not enough and they largely focus on supporting parents disputing contact and living arrangements for children who also cannot access legal funding and are trying to navigate the legal process on their own.

Assessment of kinship carers is more complex these days. Due to a higher level of kinship arrangements breaking down there is now more focus on assessment in proceedings, the quality of kinship care and the use of foster care standards and payments as well as expectations of carers to manage often difficult family relationships. Although more support is offered through Local Authority kinship teams and there is access to therapeutic support this is within a system where young people may have high reparative needs and delayed trauma. Teenage mental health provision through the NHS for example is especially stretched now.

2) How do these challenges impact upon:

- a) prospective kinship carers understanding their rights and options;**
- b) the likelihood of the child being raised (safely) within their family;**

- c) a kinship carer (or prospective kinship carer) securing a legal order appropriate to meet the child's needs;
- d) the child, kinship carers and birth parents getting the support they require;
- e) how well the family justice system is functioning including capacity issues and the 26-week time limit for care proceedings.

In private law proceedings between family members no one gets legal aid and courts often struggle to manage difficult proceedings without help and often call on Local Authorities to support these proceedings to ensure decisions can be made. Local Authorities have to divert funds for the direct support of children in their localities to fund legal support for the courts (we cannot act for carers themselves), and where needed to fund kinship carer's private solicitors to get orders they need to prevent those children coming into care. There is little support in the voluntary sector for kinship carers and not often from experts in the field as there is a limited supply of good quality care lawyers nationally.

Sometimes it is possible for kinship carers to access legal aid, but this is limited. If a kinship carer can get parental responsibility for a child already in their care they can seek legal aid, but this depends upon them having the legal right to seek party status and that is not an easy application to make without support and guidance. Local Authorities will do their best, but they may not know enough about the carer to support their application in the early stages, and they do not fund those they do not think can provide care, as there are many who cannot offer the care they need and there are limited funds. Budgets are now much tighter as savings have to be made and choices may have to be made between direct work and support for families or providing legal funding to kinship carers.

Even for family members positively assessed as kinship carers they face having no right to become a party to proceedings and the family proceedings rules mean the court needs to direct what, if any information, they receive in writing. They have no automatic right to court papers even once they become carers and are reliant on others to share information with them about the experiences of the children in their care as well as the court process and the timetable for decision making - this makes it difficult for them to know what is going on or to receive information. Local Authorities will always aim to keep them updated and informed where they can, but they have to refer to the courts for direction and listing cases and obtaining court time is difficult at the moment. This has been exacerbated by Covid where kinship carers may find it hard to access courts who hold hearings wholly or partly online and where it has caused delays in cases being heard by the Judge.

3) What changes should be made to address these challenges and enhance the chances of children remaining safely and being adequately supported within their family network?

Placing kinship care on a formal footing is more important than ever. It is important to handle matters of health, grant permissions for school and is a factor in the consideration of housing allocation or priority need as well as benefits and immigration.

It is important to emphasise that any payments a local authority make in regard to Kinship are discretionary. The majority, if in support of the kinship carer will provide funding for initial advice at least. If the matter escalated to care proceedings then more funding is provided. But there again, the majority of funding is discretionary, it depends on the facts and adopted policies, however where a child is in need under section 17 of the Children Act 1989, then a local authority is under a general duty to provide support both as a one off and on an ongoing basis which can include financial support.

In respect of Legal Aid, in reality there is an expectation for local authorities to provide support to the court process who find it difficult to manage litigants in person, as well as parents and their lawyers to inform and drive forward alternative carers. Not only is there an expectation local authorities will fund advice for kinship carers, but it is also noticeable how legally aided parents do not drive forward kinship carers as witnesses in their proceedings as their funding arrangements do not support or incentivise this.

Legal Aid is a huge issue and local authorities are regularly asked to cover the gap that legal aid leaves both in this regard, and in expert instruction (often by thousands of pounds) and litigation support. There is no extra funding provided for this or recognition of these difficulties, with local family justice boards often not attended by legal aid representatives even where remote attendance is used, and they could be assisting to resolve these issues. There are wide variances in legal aid across the country on the basis of differing decision making and delays in the system which mean Local authorities are sometimes faced with the need to step in and cover funding to ensure young children have the option of adoption in their care plan when there are no kinship carers available.

Many local authorities set a figure for initial advice and make it a condition children's panel solicitors are used to ensure quality of advice and prevent excessive billing. LLG membership feedback is that often private practice solicitors will not accept the rates of payment a local authority will set for initial advice. They want higher values whereas authorities want legal aid rates given these are rates paid in Court and for their own in-house solicitors. Most firms now seek hourly rates of between £200 and £300 per hour whereas family legal aid rates are now paid at £65 to £75 per hour. As there are disparities between the amount authorities have set, firms also question why some pay more and others less, refusing to take a lower amount where a higher amount can be found elsewhere.

The extent to which private practice solicitors can support this area of work is impacted by the low rates of legal aid as opposed to other areas of law. And this is affecting quality, as more junior members of staff or even unqualified staff are advising, which is not helpful

Children's Services departments often pay for attendance at court, especially where they are seeking to support a family arrangement without the need for care proceedings, or allegations of significant harm against the parents. However, Kinship carers, often grandparents, may then be accused of being overbearing by the parents, who in these cases often have learning difficulties, are not funded by legal aid as these are private proceedings. The current legal aid system does not help families navigate the legal system when they need it and drives them to more adversarial processes, and even care proceedings, when that is not in the interests of children or long-lasting kinship arrangements with carers and parents working together.

By making it the responsibility of Local Authorities with different budgets and reserves, a variation of practice occurs across the country with some Local Authorities more challenged financially than others which can impact provision. In some instances, due to financial constraints, public law proceedings are used to enable a family to obtain a child arrangement order and prevent instability which in reality, is like using a sledgehammer to crack a nut.

LLG would advocate for publicly funding relatives without means testing in situations where kinship carers are assessed as being appropriate and there are very good long-term reasons why a child should remain with a family member; both in terms of outcomes for children and the saving of societal costs as well as the direct costs of Local Authority intervention and direction when many families are perfectly capable of resolving practical care. Local authorities could then divert funds to better kinship support to sustain placements in the long term and target support where it is needed, within the families

4) Would implementation of the commitment made by the Ministry of Justice in the 2019 Legal Action Support Plan to expand the scope of legal aid to cover special guardians in private law make a difference?

Yes. See below also.

5) Are there any other points about access to legal advice and representation in relation to kinship care that you wish to make?

The Special Guardianship Regulations of 2005 have created regulation that kinship carers struggle to understand, and this can exacerbate any problematic relationships with Local Authorities who try to explain the regulatory requirements of carers. If legal aid is not going to change then there needs to be more efforts made to simplify the rules as they apply to carers and provide guidance individuals can access and understand without legal guidance (even with it the guidance is not well understood). Kinship teams do offer and provide advice on the rules, but carers struggle to accept this advice. An example of this is over means assessment updates – they are required to be sought by LAs annually, but families often refuse even though it is in

their interests to have an annual review and it is required by the regulation. Local Authorities cannot enforce this other than suspending payments which can put the placement at jeopardy but is there to ensure there is interaction especially for hard-to-reach carers. Recognition of these carers will help change this dynamic but so will guidance aimed for carers directly.

Overwhelmingly Kinship care is of essential importance. If we are to stop children from entering the social care system they have a critical part to play, they have the benefit of retaining family links and remaining part of the family network. If they were better supported in the court process there may be more willing to come forward, and more able to overcome challenges or unintentional barriers the legal system creates.

It would also be helpful if more people within the general public knew about kinship care and what it means. If there is a wider understanding, there may be better recognition in Society and people may be more willing to put themselves forward. They would be better motivated to do so if they had confidence that there is independent advice and support along the way.