

**APPG INQUIRY ON LEGAL AID  
WRITTEN EVIDENCE SUBMISSION – ASSOCIATION OF LAWYERS FOR  
CHILDREN (2204003)**

- 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

*In our experience prospective kinship carers can find it very difficult to obtain legal support at the earliest stages of local authority involvement in respect of a child. They may not be encouraged to seek legal support by the child's social worker who might take the view that obtaining advice would be premature, despite early advice being potentially beneficial in order to aid understanding and identify any early steps that might avoid difficulties later. Kinship carers are often criticised in assessments for a lack of understanding of the issues of concern for the local authority, early legal advice can ensure that all relevant information is shared with prospective kinship carers which should ensure fair assessment. Even if a need for early legal advice is identified, the limited availability of legal aid at an initial 'Legal Help' level will mean that very few prospective kinship carers are able to access legal support from a solicitor in private practice without meeting the cost of it themselves. Issues in respect of obtaining publicly funded legal support at Legal Help stage include a stringent means and merits test which will render many working people ineligible for any assistance and a lack of providers with capacity to provide initial advice. Many prospective kinship carers will find themselves ineligible for publicly funded legal advice but unable to meet the substantial cost of privately funded advice (or unable to do so without substantially depleting their financial resources which otherwise could go more directly towards meeting the relevant child's needs). While some help can be accessed through third-sector organisations such as Family Rights Group this will not always be sufficient to meet the carer's need for legal support, and access will depend on appropriate signposting and availability of those organisations – in our view better access to early advice for kinship carers is likely to lead to better planning for children and young people, less delay later in proceedings, and better outcomes overall.*

- during the formal pre-proceedings stage

*Kinship carers will face many of the same difficulties as above in accessing advice as a pre-proceedings stage. Once a local authority is contemplating*

*proceedings we would think it more likely that kinship carers would be appropriately signposted towards legal advice, but eligibility issues remain as above. Parents and those with parental responsibility have access to non-means-tested legal advice and assistance during the pre-proceedings stage but the same is not currently afforded to kinship carers, not even those who are caring for a child at the request of the local authority. This has the potential to undermine the pre-proceedings process in that possible kinship care options for a child subject to pre-proceedings may not be properly explored which in turn may make care proceedings more likely; and this would be to the detriment of the child/ren concerned.*

- when a child is subject to care proceedings

*Barriers to kinship carers' access of legal advice when care proceedings have commenced mainly relate to eligibility. Legal aid for kinship carers will usually be subject to means and merits testing. The means test applied will rule out many prospective kinship carers from eligibility to legal aid, and a merits test is also applied. The fact that legal aid is merits as well as means tested can in practice make it harder to obtain legal aid promptly as it adds another barrier to the grant of legal aid and provision of prompt advice for the client. The reality is that legal aid providers are doing a great deal of work pro bono. Representation within care proceedings can cost many tens of thousands of pounds at private rates meaning it is out of financial reach for many if they cannot obtain legal aid because of eligibility difficulties. Local authorities will usually offer funding to kinship carers for initial legal advice if they have had a positive assessment (though often capped in a way which means that the work offered at the price proposed will be limited) and sometimes they will offer more extensive funding for representation within proceedings but this is usually, in our experience, limited to those cases where the position taken by the kinship carers and local authority is broadly aligned and therefore will not assist all kinship carers with meritorious cases. Where local authorities do offer funding it is usually capped at legal aid rates with a total cap at an amount frequently less than 3 hours a very junior fee earner's private hourly rate, that means that providers who predominantly take on legal aid work are asked to act for those who are not eligible capped at legal aid rates and without any uplifts for accredited experts, considering relevant documentation, meeting the prospective carer, liaising with the parties and the court often taking the actual fees incurred over the amount paid to the firm. Many firms are refusing to work for the rates offered by local authorities. Support offered by charities will not usually extend to representation within court proceedings. The impact of this is that some kinship carers will either play no role, or an inappropriately limited role, within proceedings for want of representation, or will play a role but without access to adequate legal support and representation. The importance of kinship carers being fully*

*aware of concerns in the proceedings and the impact on the potential placement of the child(ren) cannot be overstated.*

- when a child is subject to any other legal proceedings?

*Kinship carers will experience many of the same obstacles as in the case of care proceedings, but with the added difficulty that legal aid for private law proceedings is further restricted by both a merits test and 'gateway criteria' which may not always be satisfied by the particular circumstances of a case. It is noted that there is potential for proceedings to be brought in respect of any subject child throughout their minority.*

2) How do these challenges impact upon:

- a) prospective kinship carers understanding their rights and options;

*A lack of early advice can have a significant impact on the ability of kinship carers to understand all aspects of the situation facing them, their family and the child who they hope to care for. If legal advice is not accessed they will be dependent on information provided by local authorities, which will vary in detail and quality, and obtained through other methods. In many cases this will mean that kinship carers will not fully understand their rights and options. This is relevant to considering the most appropriate legal basis within which a child should be placed with them.*

- b) the likelihood of the child being raised (safely) within their family;

*Provision of appropriate legal support will in some cases mean the difference between a kinship carer being able to demonstrate to a local authority or court that they are able to offer a safe placement to a child and that option being ruled out and the child living outside of their family. Legal support can also sometimes assist in identifying, and resolving, future difficulties in a placement such as a deficient support package (to include financial support, provision of services and assistance with management of contact), meaning that the resulting placement is more resilient than it may otherwise have been.*

- c) a kinship carer (or prospective kinship carer) securing a legal order appropriate to meet the child's needs;

*In cases already before the court (for instance in care proceedings) a court will often be able to identify the appropriate legal order needed to secure a child's situation with a kinship carer without the carer having legal representation. However there will be cases where the most appropriate legal order can only be identified through a*

*kinship carer having full understanding of their options and representation to argue for something other than the most common options of a child arrangements order or special guardianship order. By way of example sometimes the most appropriate order for placement of a child with a kinship carer will be a care order held by a local authority, but this option may not always be attractive for a local authority and may require justification and argument in support by a kinship carer in order for it to be given proper consideration.*

*Where there are no current proceedings (for instance where a child is voluntarily accommodated with a kinship carer) a lack of legal support may lead to undue delay in applying for a legal order or inappropriate applications being made.*

- d) the child, kinship carers and birth parents getting the support they require;

*In our experience, having appropriate and early legal advice will usually be essential to enable kinship carers and birth parents – and children – to get the long-term support they require. Initial drafts of special guardianship support plans often contain gaps which need to be identified and filled, and a failure to identify those difficulties prior to a final order being made can lead to very significant difficulties in the future and lead to breakdown in placements and hugely negative consequences for the children concerned. A lack of legal support to prospective kinship carers can mean that a child whose needs justify additional support potentially available under a care order will instead become subject to a special guardianship order with insufficient support being provided, risking placement breakdown.*

- e) how well the family justice system is functioning including capacity issues and the 26-week time limit for care proceedings.

*A lack of legal support provided to prospective kinship carers can lead to delay in engagement which could lead to unnecessary issue of care proceedings, late engagement in proceedings which can lead to adjourned final hearings and consequential delay, inadequate assessments of kinship carers leading to application for further assessment which can cause delay to proceedings, and in the worst cases wrong decisions being made at final hearing leading to successful appeals and re-hearings or further proceedings being required later in order to address potential kinship placements that should have been considered within initial care proceedings. All of these outcomes have impact on the court's capacity to hear cases promptly and within the 26-week time limit.*

- f) Losing prospective carers

*Many carers feel overwhelmed navigating the procedural hurdles in place and drop out of the assessment process.*

*Many carers could successfully challenge a negative assessment if in receipt of legal advice.*

*There will many cases where children are losing out on opportunities to be in the care of a family member.*

- 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?

*The ALC would support a change in legal aid regulations to broaden access to legal aid for kinship carers and prospective kinship carers as set out in the [briefing note](#) to the Ministry of Justice jointly prepared by the Family Rights Group in conjunction with the Association of Lawyers for Children and other relevant bodies. These are realistic and proportionate changes which would substantially assist kinship carers and, in our view, would likely lead to safer and more robust placement of children.*

- 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?

*It is unlikely to make a substantial difference to the issues identified above unless the change is accompanied by the changes proposed in the briefing note mentioned at 3 above.*

*We would also note that the changes to means testing currently proposed within the LAA's means test review would not substantially ameliorate the issues either – as even means testing under the new thresholds would exclude many kinship carers from scope of legal aid.*

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

*It has been the experience of our members that a lack of early advice or adequate representation for kinship carers can often lead to delay in achieving permanence for children. A consequence of such delay is distress to families involved court proceedings and uncertainty for children themselves.*