Lost in the legal labyrinth: How a lack of legal aid and advice is undermining kinship care

Report of the All Party Parliamentary Group on Kinship Care

May 2022

The APPG Inquiry and this report were supported by Family Rights Group.

About the APPG

The All Party Parliamentary Group on Kinship Care is a cross party group of MPs and Peers who share a common interest in championing kinship care and improving support for kinship carers. The Group was established in March 2021 and Family Rights Group serve as the Group's secretariat.

The APPG seeks to raise awareness of kinship care and to promote policy and practice which supports more children to live safely within their family and friends network, when they cannot live with their parents. The Group also seeks to improve support for kinship carers and to amplify the voices and experiences of children in kinship care and their families.

The Group builds on the work of the cross party Parliamentary Taskforce on Kinship Care which existed 2018-2021.

See the Group's website for more details:
https://frg.org.uk/policy-and-campaigns/kinship-care/appg-on-kinship-care/

About Family Rights Group

Family Rights Group is a national charity that works with parents in England and Wales whose children are in need, at risk or are in the care system and with members of the wider family who are raising children unable to remain at home. They advise mothers, fathers, kinship carers and prospective kinship carers about their rights and options when social workers or courts make decisions about their children's welfare. They campaign for families to have their voice heard, be treated fairly and get help early to prevent problems escalating. They champion policies and practices that keep children safe within their family and strengthen the family and community support networks of children in the care system.

The charity convenes a kinship carers' panel, runs a freephone, independent and confidential child welfare practice and legally-based advice line for families involved in the child welfare system, hosts and moderates an on-line discussion forum for kinship carers and has extensive advice resources for kinship carers on its website. It also conducts research on kinship care, and provides the secretariat, including legal and policy support to the Kinship Care Alliance and previously to the Parliamentary Taskforce on Kinship Care.

What is kinship care

Kinship care (also known as family and friends care) is any circumstance where a child is being raised by a friend or family member other than their parent. Kinship carers are commonly grandparents, but they can also be brothers and sisters, aunts and uncles, or close family friends. Kinship carers have stepped in to take on the care of a child, who is unable to live with their parents due to tragedy or trauma. Around 200,000 children in the UK are being raised by kinship carers.

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Foreword by Andrew Gwynne MP, Chair of the APPG

When my grandson Lyle was born in 2019, my wife Allison and I immediately fell in love with him. Like all grandparents, we were looking forward to having him in our lives and watching him grow. Little did we know, he would become a bigger part of our lives than we ever imagined. After circumstances that many people across the country would identify with, we soon became Lyle's kinship carers.

Lyle is one of more than 160,000 children across England and Wales who are raised by kinship carers – grandparents, older brothers and sisters, aunts, uncles, or even family friends, who step in to raise children who can't stay at home. Without kinship carers, children often become looked after in the care system by unrelated foster carers or are adopted.

Children are raised in kinship care for a variety of reasons and have invariably experienced loss, tragedy or trauma. Research shows that outcomes for most children living in kinship care are positive and that the children feel loved and a greater sense of security and stability than those living with strangers in the care system. Yet, too often children end up in the care system when they could be living with relatives or family friends who they know, love and can forge lasting relationships with.

The Parliamentary Taskforce on Kinship Care found that kinship care is often an afterthought when there are concerns that a child might not be able to remain at home. Exploring possible arrangements with family and friends should be the first thought in such situations. Moreover, among the Taskforce's detailed findings, a lack of access to free, independent legal advice and representation was highlighted as a problem for families considering taking on the care of a child who cannot safely remain with their parents.

To explore this issue further, in January 2022 the All Party Parliamentary Group on Kinship Care launched its inquiry into access to legal aid and advice for kinship carers and prospective kinship carers in England and Wales. The report you are now reading shines a spotlight on the challenges carers and prospective carers face in stepping forward and supporting the children they are raising to thrive.

Like many kinship carers, Allison and I had to go through the Family Court for a Special Guardianship Order (SGO) giving us parental responsibility so that we could make decisions about Lyle's upbringing. To be considered for an SGO, you have to undertake hours of assessments, police and financial checks and medicals to ensure you are fully competent. It's a very stressful experience, and can feel like an emotional rollercoaster.

Many carers get into substantial debt to secure the legal support they need. Charities like Family Rights Group provide free, independent advice to kinship carers to help them to understand the law and their rights and options. But such services are running at full capacity and many prospective kinship carers have to represent themselves in court or find themselves completely side-lined in important decisions about their family.

The Independent Review of Children's Social Care in England, led by Josh MacAllister, has made kinship care a focus of its work and many of the challenges highlighted in this report have been expressed by kinship carers contributing to the Review too. We await the Review's recommendations and I hope they will reflect the strong message kinship carers and others have sent them about the importance of supporting children to remain safely in their family and friends network when they can't remain at home. Moreover, I hope the Government will give close consideration to the APPG's findings too and any recommendations the Review makes, so that we can ensure the best outcomes for children across England and Wales.

Executive Summary

Kinship carers are family or friends who step in – often in an emergency – to raise children who cannot stay at home. They are mostly grandparents but many are aunts, uncles, older brothers and sisters or family friends. More than 160,000 children across England and Wales are being raised in kinship care.

Children are raised in kinship care for a variety of reasons and have invariably experienced loss, tragedy or trauma. Research on kinship care has found that outcomes are positive for most children living in kinship care, and that overall children feel loved and have a greater sense of security and stability than those living with strangers in the care system.

In January 2022, the All Party Parliamentary Group on Kinship Care launched its inquiry into access to legal aid and advice for kinship carers and prospective kinship carers in England and Wales. It was prompted by findings from the Parliamentary Taskforce on Kinship Care in 2020, which highlighted that a lack of access to free, independent legal advice and representation was impacting on families who were considering taking on the care of a child who could not safely remain with their parents. Important commitments made by the Ministry of Justice to expand legal aid to prospective special guardians in private law had also not been implemented, as planned

There are two key angles to the importance of legal advice and representation in respect of kinship care which are addressed in this report. The first is in relation to how far the child welfare and family justice system supports and enables prospective carers to step forward and volunteer to raise the children, thereby averting the need for them to live with strangers in the care system and potentially avoid the need for care proceedings altogether. The second relates to how those kinship carers secure the right type of kinship care arrangement to meet the child's needs. The type of arrangement they have - whether they are the child's kinship foster carer, have a private law order like a special guardianship order, or have no legal order at all – has a significant impact on the practical, educational, therapeutic and financial support available to meet the child's needs and on the carer's ability to support them to thrive. The decision can have a lasting impact throughout the child's life and into adulthood, and so the importance of the carer being able to effectively participate in any proceedings and to make informed decisions cannot be understated.

The inquiry has received evidence from hundreds of kinship carers across England and Wales, including at an oral evidence session and in a national survey carried out by Family Rights Group, the APPG's secretariat. We have also considered an analysis of calls from kinship carers to Family Rights Group's advice line, and heard from legal practitioners and legal organisations working in children and family law.

What kinship carers told us:

- 82% of kinship carers surveyed did not feel they knew enough about their legal options to make an informed decision about the best options for their kinship child.
- Fewer than half of respondents (48%) were satisfied with their current legal arrangement for the child. 35% said they were not satisfied and this mostly related to the support they were able to access under the current arrangements.
- Nearly 4 in 10 (38%) of the kinship carers surveyed had NOT received any legal advice about their rights and options for their kinship child.
- Where carers had received legal advice, a quarter (25%) had paid for some or all of the costs themselves. Only 16% had received part or full payment through legal aid. 56% had received part or full payment by the local authority but the scope of such provision is limited.

- For those who had experience of court proceedings in relation to their kinship children, almost a third (30%) had to represent themselves at least for some of the time. 32% were legally represented by a solicitor or barrister throughout those proceedings and 59% had legal representation for at least some the proceedings.
- Where kinship carers were represented by a solicitor or barrister, almost a third (28%) of respondents paid some contribution towards the cost of legal representation, including those reliant on family and friends to help. 40% indicated their costs were covered in full by the local authority and a further 6% covered in part. Only 19% qualified for legal aid for all of the costs and for a further 10% legal aid only covered part of the costs.
- Many carers indicated they were not party to proceedings which meant they were side-lined in the important decisions being made by the court about the children they had stepped forward to raise. It also means they did not qualify for legal aid in care proceedings.
- Over a third (37%) of kinship carers surveyed had made personal contributions to the costs of legal advice, court fees and legal representation. Of those carers: 47% had costs up to £1000; 27% between £1001 and £5000; 16% between £5001 and £10,000; and 9% in excess of £10,000.
- Nearly three quarters (72%) of kinship carers said that becoming a kinship carer had caused them financial hardship. 4 in 5 carers had to either give up work (52%) or reduce their hours (29%).

What are the challenges:

- **A broken system**: The child welfare and family justice system does not sufficiently support relatives and friends to step in to prevent children needing to enter the care system and be cared for by strangers. In doing so, the principle of the state working in partnership with children and their families is undermined. Further, it frustrates the explicit duties on local authorities, set out in primary legislation, which reflect that children are best brought up within their families unless compulsory intervention is necessary. It does not sufficiently support (prospective) kinship carers involvement or give them the ability to make informed decisions about the children they are seeking to provide a loving home for. The system fails to ensure that kinship carers can access the legal advice and representation they need to secure an appropriate legal arrangement for the child or the support provision necessary for the child to thrive throughout their life.
- **Un-informed decisions**: Without legal advice, many kinship carers are not in a position to make informed decisions regarding the best kinship care arrangement for them and the child they are/ will be raising. They are often unaware of the practical and financial support implications of pursuing (or agreeing to) one type of kinship care arrangement verses another. This can be detrimental to the interests of the child, particularly where they have additional needs. It can also undermine the efforts of the kinship carer to provide a safe and loving home and their ability to provide the support the child needs to thrive.
- **Barriers to legal advice and representation**: Kinship carers face significant challenges in accessing publicly funded legal advice and representation. Some of these challenges stem from the strict parameters of the legal aid regime including the means test. Others result from practical barriers, such as kinship carers not being made a party to care proceedings or the availability of solicitors who are willing and able to take on their case because of the limited funding available. The costs of securing legal advice and representation privately can also be prohibitive for many kinship carers and many are not able to seek essential legal advice or join proceedings as a result. Others are forced to represent themselves in court, often while all other parties in the proceedings have legal representation.
- **Importance of early advice**: The inquiry heard the importance of kinship carers being clearly informed from the outset, for them to be able to understand the situation facing the family including the severity of the concerns and to be able to make a more informed decision about whether to step forward to offer to care for the child. This could also avert the need for more intrusive and costlier interventions further down the line, and smooth the progression of care proceedings where recourse to the court is necessary.

- **Means testing**: The inquiry heard that the legal aid means test is a barrier to many carers accessing legal aid due to the Legal Aid Agency's very low income and capital thresholds. Many carers with far from comfortable living standards, including those living below the Joseph Rowntree Minimum Income Standards, are excluded. Removing the means test for (prospective) kinship carers would assist family and friends to get the legal advice and support they need to obtain the best outcome for the child.
- **Local authority provision**: Local authorities are plugging gaps in legal aid provision from already stretched local government funding. However, the approach taken to legal support is inconsistent across local authorities and is insufficient to provide the advice and representation kinship carers need. The sums are normally so limited that many solicitor firms will not take on this work, and amongst those that do, many are either limited in the work they can undertake or top up advice on a pro bono basis in a bid to meet carers' needs.
- **Family Rights Group's advice service**, has a crucial role to play for families right along the child welfare continuum, but specifically at the early stages of state involvement children and families. In supporting prospective carers to understand their rights and options and to effectively participate in decision making, it helps secure the right outcome for the child and leads to savings for the taxpayer from the costlier interventions avoided. Yet, the advice service which is part-funded through a contract with the Department for Education, is overwhelmed with calls. In 2020/21, 18,000 callers rang the advice line, the highest number in FRG's history. Almost one in three callers are kinship carers or prospective kinship carers. Resource constraints and rising demand meant that the charity was only able to answer four in ten callers.
- **Support packages**: While entitlement to support for the child and the carer is largely dependent on the type of kinship arrangement the carer has, the extent of support and access to discretionary help from the local authority is significantly influenced by the negotiations that take place. Where carers/prospective carers are not informed about their rights and options, where they do not have a full understanding of the child's needs, and where they lack the legal representation to conduct that negotiation effectively, they struggle to secure the support the child needs to thrive. This, along with securing the appropriate kinship arrangement, can impact the long term stability of the kinship placement.
- **Assessments**: Kinship carers can struggle to gain a clear understanding of local authority assessment processes or know what is being asked of them or what they should be able to expect from children's services and the family court. A lack of information and understanding can be a reason that otherwise suitable prospective kinship carers receive a negative assessment by the local authority. Uninformed and unsupported carers can feel overwhelmed and drop out of the process altogether, or emerge late in the day when the likelihood of a child being removed into the care system is greater.

Our vision and recommendations:

Kinship care and the amazing role kinship carers play in the lives of the children they are raising should be recognised and supported.

Family and friends who are considering becoming kinship carers should be able to access early, specialist, independent legal information, advice and advocacy services. This would ensure they understand their rights and options and have the opportunity to influence decisions in child welfare meetings and during court proceedings about the child's future and their support needs. This support should be available wherever they are on the child welfare continuum; from an early stage when a local authority first has concerns about a child's welfare, through to the formal pre-proceedings stage, and during any care proceedings. It should also be available to those who are already kinship carers, either as a result of earlier court proceedings or through informal arrangements, so they can seek advice on their current arrangements and whether to pursue alternatives or to challenge support plans.

The child welfare and family justice system should ensure that kinship carers have access to publicly funded legal advice and representation that is not dependent on the policies of individual local authorities or the generosity of solicitors providing assistance on a pro bono basis. This would mean that they are properly informed from an early stage about the options available to them and are represented where necessary.

Specialist advice services such as Family Rights Group's free telephone advice line, part-funded by the Department for Education and currently working at full capacity, should be adequately funded to provide support and assistance to all families involved in the child welfare and family justice system. This would work alongside there being access to specialist legal advice and representation through publicly funded legal aid for those families where necessary. Currently this does not exist for most kinship carers. In working with and supporting families from an earlier stage, such a system would be more conducive to children being raised safely within their family network when they can't remain at home. In addition to better outcomes for children, strains on the care system and the Family Court would also be reduced.

Our recommendations to achieve this include:

For kinship care and the different types of arrangement the term encompasses to be clearly define in primary legislation. It is time to define kinship care.

Adequate funding for not-for-profit independent legal advice, information services and advocacy services specialising in child welfare and family court law and practice

Non-means tested early advice should be available under legal help to kinship carers and prospective kinship carers

For the Ministry of Justice to fulfil their commitment to expand the scope of legal aid for prospective special guardians in private law and to mirror the provision in public law. We would press for this to be non-means tested.

For the Ministry to consider extending this further to include all kinship carers who are considering taking on (or who have taken on) the care of a child where there is court, local authority or practitioner evidence which has determined that the child cannot live with their parents.

Non-means but merit tested legal aid for kinship carers who have a case to challenge inadequate assessments.

Local authorities should review their family and friends care policies to: signpost where kinship carers or potential carers can get free specialist independent legal advice; and ensure they set out clearly local criteria for funding legal support (including legal advice, court fees and representation).

Improved monitoring of the family justice system's approach to kinship care, including better data collection and knowledge sharing.

See **Chapter 7** for full recommendations.

Introduction

'For many children living with extended family and friends will be the best option and provide a real sense of belonging'

Case for Change, The Independent Review of Children's Social Care in England

Kinship carers are family or friends who step in – often in an emergency – to raise children who cannot stay at home. They are most commonly grandparents but many are aunts, uncles, older brothers and sisters or family friends. More than 160,000 children across England and Wales are being raised in kinship care. Many more children are raised in kinship care than are in the care system or adopted.

Children are raised in kinship care for a variety of reasons and have invariably experienced loss, tragedy or trauma. An overview of UK research studies on kinship care found that outcomes are positive for most children living in kinship care, and that overall children feel loved and a greater sense of security and stability than those living with strangers in the care system.[1] However, the cross party Parliamentary Taskforce on Kinship Care found that kinship care is too often an afterthought in the child welfare system.[2] Moreover, although children in kinship care have experienced similar adversities to those in the care system, they and their carers often receive much less support. With the number of children in the care system in England at the highest levels in 35 years, the Taskforce found that a greater focus on kinship care and more support could ensure more children are raised safely in their family network.

The All Party Parliamentary Group on Kinship Care is a cross-party group of parliamentarians who share a common interest in championing kinship care and improving support for kinship carers and the children they are raising. The Group was established in March 2021 and it builds on the work of the Parliamentary Taskforce. Family Rights Group serve as the Group's secretariat.

In January 2022, the APPG launched an inquiry into access to legal aid and advice for kinship carers and prospective kinship carers in England and Wales. It followed initial findings by the Taskforce inquiry that a lack of access to free, independent legal advice and representation was impacting on families considering taking on the care of a child who cannot safely remain with their parents. It also followed some welcome commitments by the Ministry of Justice to expand the scope of legal aid to cover some kinship carers applying for special guardianship orders, which had then hit the buffers, not being implemented three years on from the commitment being made.

In that context, the inquiry has set out to: bring a renewed focus on the issues kinship carers and potential kinship carers face in accessing legal advice and representation when navigating the family justice system; consider the wider impact of these challenges on the child welfare and family justice system; update the evidence base; and to inform the Ministry of Justice and Department for Education in their Covid recovery work.

The inquiry has taken evidence from hundreds of kinship carers across England and Wales, including at an oral evidence session and in a survey carried out by Family Rights Group. We have read an analysis of calls from kinship carers to Family Rights Group's advice line, and have also heard from legal practitioners and legal organisations working in children and family law. This report analyses the evidence we have heard and received, setting out the challenges currently facing kinship carers in accessing legal support and the impact of this on children, families and the child welfare and family justice system. We consider the sector's proposals for change and offer recommendations for national and local government to consider.

1 Hunt J. (2020), *Key findings from the last two decades of UK research on kinship care*

2 Parliamentary Taskforce on Kinship Care (2020), *'First Thought Not Afterthought' Report. See: https://frg.org.uk/policy-and-campaigns/the-cross-party-parliamentary-taskforce-on-kinship-care/*

We consider the sector's proposals for change and offer recommendations for national and local government to consider.

The key message to emerge from the evidence received from kinship carers is that the availability of legal advice and representation is crucial to their being able to understand their rights and options. The vast majority did not feel they had been given enough information to make those decisions. Accounts from carers show widespread variation in how and when legal advice and representation were provided and the extent to which the state expected kinship carers to meet legal costs from their own resources. The evidence depicts a child welfare and family justice system that does not sufficiently support (prospective) kinship carers to make informed decisions about children they are stepping forward to provide a loving home for.

Legal practitioners presented a similar message in their evidence to the inquiry. They detail the challenges kinship carers face in simply accessing legal advice and representation and how this impacts the ability of kinship carers and prospective carers to navigate the family justice system and secure the best outcome for the children they are raising or seeking to raise. A key message in their evidence was that working with and supporting families from an early stage could divert cases from the family court, avert the need for costlier and more intrusive interventions in family life, and smooth the progression of care proceedings where they are necessary.

This report is divided into several parts:

Chapter 4 sets out the current legal context and how the current legal aid regime works

Chapter 5 presents analysis of evidence the inquiry has received from kinship carers

Chapter 6 presents analysis of evidence the inquiry received from the advice and legal sector

Chapter 7 presents the inquiry's conclusion and recommendations

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The Legal Context

The provisions of the Children Act 1989 reflect that children are best brought up within their families unless compulsory intervention is necessary.[3] In Wales, whilst responsibility for the courts, judiciary and legal aid remain with the UK Government in Westminster, children's social care is devolved. Under the Social Services and Well-being (Wales) Act 2014, local authorities in Wales have a legal duty to promote the upbringing of children by their families where consistent with the well-being of the child. In England and in Wales the importance of the state working with children and families is reflected in the underlying principles of partnership working and co-production respectively.[4]

Despite this framework, the Parliamentary Taskforce on Kinship Care found that family members are often an untapped resource and explored too late for some children unable to remain with their parents.[5] Kinship carers (and prospective kinship carers) were found to have extremely limited access to financial and practical support including access to legal advice and representation.

This chapter provides an overview of the different types of kinship care arrangements. It highlights how the type of arrangement has implications for practical and financial support for (prospective) kinship carers, including access to legal advice and representation. This chapter reviews the current legal aid framework relevant to (prospective) kinship carers including factors impacting eligibility.

4.1 Types of kinship care arrangements

As highlighted in the opening to this inquiry report, children are raised in kinship care for a variety of reasons. For some, kinship care will be a temporary arrangement. For others it will be long-term. There are six types of kinship care arrangements, and the type of arrangement has significant implications for:

- The practical and financial support available to the carer and child, including what financial assistance they may receive for legal advice
- Entitlement to, and extent such support is likely to be provided
- Who has parental responsibility[6] to make decisions about the child.

Access to sustained support for kinship care households is often very limited. What is, or may be, available varies on a range of factors including where the carer lives as well as the type of kinship care arrangement.

3 DfE (2018) *Working Together to Safeguard Children 2018*, 9:10-11; DfE (2021) *Children Act 1989: care planning, placement and case review*, 1:5

4 *Part 2 Code of Practice (General Functions)* of the Social Services and Wellbeing (Wales) Act 2014; DfE *Working Together to Safeguard Children 2018*

5 Parliamentary Taskforce on Kinship Care (2020), *'First Thought Not Afterthought' Report*

6 Parental responsibility (PR) is all the rights, duties, powers, responsibilities and authority, which by law a parent has in relation to the child. Unless a Family Court order says something different, a person with PR can make important decisions about a child's life.

Different types of kinship care arrangements

1. Private family arrangement

2. Private fostering

3. 'Lives with' child arrangements order or residence order

4. Special guardianship

5. Kinship foster care (under a care order or under a voluntary arrangement)

6. Adoption

The infographic above shares an overview of the different types of kinship care arrangement:

1. **Private family arrangement**: when a close relative[7] raises a child without the prior involvement of children's services and the Family Court.
2. **Private fostering**: someone who is not a close relative of the child and not already an approved foster carer looks after a child for 28 days or more will then be regarded as a private foster carer.
3. **'Lives with' child arrangements order**: under this private law order, the child will live with the kinship carer named in the order. The carer will share parental responsibility with the parents.
4. **Special guardianship**: A special guardianship order is a court order that says a child will live permanently with someone (who is not their parent) until they are 18. A special guardianship order gives the special guardian 'enhanced' parental responsibility for the child. This means that they can make most major decisions about the child's upbringing and care. The order restricts the birth parents' rights but does not permanently end them. A significant number of kinship carers are, or become, special guardians. Often, they are being asked to care for a child against the backdrop of children's services having commenced care proceedings. Other special guardians are those encouraged by children's services to bring private children law proceedings themselves by applying for the order. In doing so they effectively avoid the need for care proceedings.
5. **Kinship foster care**: Sometimes a child becomes looked after by children's services but the child will live with a relative or friend who becomes their foster carer. This might be under a care order, which is made under section 31 of the Children Act 1989. Or it might be through a voluntary arrangement, which is under section 20 of the Children Act 1989 or section 76 of the Social Services and Wellbeing (Wales) Act 2014.

   Children's services have the same range of duties to children raised in kinship foster care as they do to other looked after children. This includes the carer receiving a fostering allowance. In 2021 there were 80,850 looked after children in England and around 15% were in kinship foster care.[8]
6. **Adoption**: Adoption is unusual in kinship care arrangements because it changes the legal relationship with the child's parents. They legally cease to be the child's parents and similarly brothers and sisters legally cease to be their siblings.

7 A close relative is defined by Children Act 1989 as someone who is not the child's parent but is a grandparent, step-parent, aunt, uncle, sister or brother. This includes half-brothers and sisters who share only one parent. It also includes people who are related to a child by marriage or civil partnership. For example, a parent's husband or wife or stepbrothers and stepsisters.

8 Department for Education (2021), *Children looked after in England including adoptions*

There is no, single, clear definition of kinship care set out in primary legislation in England or Wales. Some specific types of kinship care arrangement are provided for in primary legislation and others referenced in statutory guidance or codes or practice. These splintered provisions are not however anchored to an overarching, clearly defined understanding of what kinship care is within primary legislation. The legal framework is thus without a definition to which all public authorities and agencies should work and to which kinship carers can direct others when facing confusion and misunderstanding regarding who they are and what they need.[9]

For more information about the types of kinship care arrangement and the support available please see Family Rights Group's **Types of kinship care arrangements quick reference table**.

4.2 Local authority's duties to involve and explore family

Early exploration and family group conferences

Where there are concerns parents are struggling or that a child may not be safe and well cared for at home, the support wider family and friends can provide should be examined. This may involve exploring whether family and friends can:

- Support the child to live safely at home
- Provide alternative care in the short term
- Care for the child in the longer term as a permanent plan for the child.

In England, statutory guidance makes clear that this should all be explored 'as early as possible'[10] and family group conferences (FGCs) are highlighted as a particularly important method of engaging with wider family at an early stage.[11] Further, statutory guidance is explicit that local authorities should consider referring the family to a family group conference service if they believe there is a possibility the child may not be able to remain with their parents, or in any event before a child becomes looked after, unless this would be a risk to the child.[12]

In Wales, the Special Guardianship: code of practice[13] is clear that local authorities must engage families at an early stage wherever possible in order to have sufficient time to fully explore possible options for a child, undertake quality assessments and to ensure that families have a good understanding of the need to nominate alternate carers for the child. It highlights family meetings as a way of helping families to identify what support might be needed and to begin to address complex matters such as managing contact from an early stage.

Role of assessments

Many children's services departments carry out a short 'initial assessment' (sometimes also referred to as a viability assessment) to explore potential alternative carers from within the family and friends' network. This type of assessment:

- Helps children's services to decide whether a family or friend may be a realistic option to permanently care for the child
- Focuses on gathering key information to help children's services decide if a full assessment has a chance of a positive outcome.

The law does not prescribe how initial assessments should be carried out. Nor does it provide minimum standards for this work. There is, however, widely endorsed good practice guidance about carrying out initial assessments has been developed and has been referred to by senior judges in their decisions.[14] This

9 For example, Family and Friends Care statutory guidance in England includes a description of kinship care and types of kinship care arrangements but is aimed at local authorities, with only a brief and generic reference to 'relevant partners'. It is unlikely to have cross agency reach and be drawn upon from all of the public authorities that kinship carers and children encounter or need to draw upon.

10 See **Volume 1 Children Act 1989: Court orders and pre-proceedings**, Chapter 2, paragraph 22

11 Family and Friends Care for Local Authorities at paragraphs 4.34 to 4.35

12 See **Volume 1 Children Act 1989: Court orders and pre-proceedings**.

13 Welsh Government (2019), Special guardianship orders: code of practice. See: https://gov.wales/special-guardianship-orders-code-practice

14 Family Rights Group (2017) *Initial Family and Friends Care Assessment: A good practice guide*

underscores the importance of timely exploration of the family and friends' network and the role of FGCs.[15] Where an initial assessment is positive in its conclusions, matters can then proceed to a full assessment of the prospective carer.

In the context of care proceedings, the Public Law Outline requires any assessments relating to the child 'and/or family and friends of the child' that the local authority will be relying on to be available at the commencement of proceedings.[16] Whether prepared prior to or during the course of care proceedings, assessments should be available in relation to all of the possible realistic options for the child's future care. Initial and full assessments together with wider social work, any expert reports and evidence prepared by or on behalf of family members, are the evidence which the court draws upon to analyse the arguments for and against each of the possible realistic options for a child[17] and ultimately to make a final decision about the long-term plan that is in the child's best interests.

Kinship care and children already looked after in the care system

In England and in Wales, if a child is already looked after in the care system, then local authorities have a legal duty to place the child with people in a certain priority order.[18] They must:

1. See if a child can be safely cared for by their parent(s). If not, then
2. See if a child be safely cared for by someone else who holds parental responsibility for them
3. Next look at anyone who was caring for the child under a child arrangements order just before they came into the care system
4. Next, place the child in the most appropriate placement looking first at wider family, friends and other people already connected with the child who are already approved by children's services as foster carers
5. Only where this is not possible, should arrangements be made for a child to live with unrelated carers. This could be foster care, or if not possible then, in residential care (a children's home).

This duty means that:

- Plans for where a child lives/who they are cared for should always be kept under review. Even if a child is looked after in the care system by an unrelated carer, this should be regularly reviewed. If a family member who may be able to care for the child comes forward, this should be explored.
- Where a child is looked after and children's services do arrange for the child to be cared for by a family member, friend or other person who is connected to them, that person must be assessed and approved by children's services as a foster carer for the child. Otherwise, the placement of the child with that relative or friend will be unlawful. Children's services may need to assess the carer as a temporary kinship foster carer so a child can be placed with the prospective kinship carer immediately.

4.3 Advice, representation, and legal aid for kinship carers

Legal aid is the use of public funds to pay for people to receive legal advice and representation. Whether someone is eligible for legal aid to fund advice and representation for issues relating to the welfare of children depends on different factors. These include whether they have parental responsibility for the child, what (if any) court proceedings they might be involved in and, in many cases, their financial situation.

Not all types of legal issues and court proceedings are 'in scope' for legal aid. One of the biggest factors affecting a (prospective) kinship carer's eligibility for legal aid is whether they are seeking advice and representation in relation to private children law (matters concerning private individuals, usually the relatives of a child); or public children's law (state involvement with children and their families). When a person is not automatically eligible for legal aid, they must pass the Legal Aid Agency's means and merits

15 See: Family Rights Group (2017), The Initial Family & Friends Care Assessment: A Good Practice Guide; and (2020), Delivering good practice initial assessments of family and friends' carers in the context of Covid-19. Both available at: https://frg.org.uk/policy-and-campaigns/kinship-care/kinship-assessment-guide/

16 See Practice Direction 12A, Family Procedure Rules 2010

17 An option will not be realistically possible if the court is 'in a position of some confidence and clarity that the option is plainly not one that would have any real prospect of being chosen if a full welfare evaluation of all the pros and cons were undertaken' (see paragraph 54 in the case of Re S (A Child) [2015] EWCA Civ 325.

18 Section 22C of the Children Act 1989; and Section 81 of the Social Services and Well-being (Wales) Act 2014

tests. This is often called 'means and merits' legal aid. It involves two separate tests.

4.3.1 The Legal Aid Agency's Means and Merits Test

The means test

This involves looking at the person's financial situation. Their income and capital must be below a set level to qualify for legal aid. The financial assessment has two elements: examining income and then examining capital. If the person has a partner, their finances must be included in the assessment. The details of how this is done and the financial thresholds which affect eligibility for legal aid are explained in appendix A; a useful flow chart showing how means testing is carried out is also included.

The merits test

The person wanting legal aid will have to demonstrate that their case has merits.[1] Things to consider when assessing a person's merits can differ depending on the type of legal aid sought.

Factors to consider include:

- Whether there is sufficient benefit to the person
- A person's prospects of success
- Whether all reasonable alternatives to proceedings are exhausted
- Whether another party in the proceedings seeks the same outcome
- The cost benefit and whether a reasonable private paying individual would pay the legal costs.[19]

The Legal Aid Agency may ask questions about the person's need for separate representation and look at any available expert reports to assess the person's prospects of success.

4.3.2 Ministry of Justice's Means Test Review

In February 2019, the government announced a review of the means test for legal aid as part of the Legal Support Action Plan. In March 2022 the Ministry of Justice published proposals for changes to the means test.[20] The changes relate to how an individual's finances will be assessed when deciding eligibility for legal aid. There are no proposals to change the areas of public and private children law that are in scope for legal aid.

The review makes many proposals. One proposal is to increase the gross income threshold (the highest amount someone can earn to be eligible for legal aid) from £2,657 per month (£31,884 per year) to £34,950 (£2,913 per month). Another is to increase the equitable disregard (the amount of a person's equitable interest in their home that the Legal Aid Agency will disregard when assessing capital) from £100,000 to £185,000. Other changes include increasing the age at which pensioners, with very low incomes, may be entitled to an additional capital disregard. Currently, this is only available for those 60 years and above but in the proposals this would change to 66 years of age.[21]

Many kinship carers struggle financially when they take on the care of a child. Older carers, including grandparents, are often on a limited income. But many will have some savings, such as a small pension, and others are likely to own a significant proportion of their property in circumstances where they have spent many years paying off the mortgage. This does not of course mean that they have access to the potentially significant funds necessary to instruct a solicitor to advise and represent them on a private

19 *The Civil Legal Aid (Merits Criteria) Regulations 2013*; *The Lord Chancellor's Guidance Under Section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*, p.6-12.

20 MoJ (2022), *Legal Aid Means Test Review*

21 These proposals relate to civil legal aid. There are alternate proposals for criminal matters.

basis. But it may well mean that they are not eligible for legal aid. Means testing this group, even with the proposed changes to the way the means are assessed (see 4.3.2) leaves a great many without access to legal aid.

4.4 Kinship carers and private law

4.4.1 Private children law explained

These are cases in the Family Court between private individuals, usually relatives of a child. A private children law application is not brought by a state agency and children's services will not be a party to proceedings.[22] They may, however, be involved in providing information or reports to assist the court.

Examples of private children law proceedings include:

- Where a prospective kinship carer is applying for a special guardianship order or 'lives with' child arrangements order
- An application for a child arrangements order to decide who a child should be in touch with, spend time with and in what way (contact arrangements)
- An application by a parent who has the permission of the court applying to discharge a special guardianship order
- An application by a parent to vary the child's contact arrangements.

Unlike in public children law proceedings, children are not automatically parties.

4.4.2 The legal aid regime for private children law

What is in scope?
(Prospective) kinship carers may be seeking legal aid in private children law proceedings for different reasons (see examples at 4.4.1 above). But since Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO'), most areas of private children law are out of scope for legal aid.[23] There are some limited exceptions, including where there are issues of domestic abuse or child abuse, and strict evidence requirements apply. Those seeking legal aid must have 'gateway evidence' that they are themselves a victim of domestic abuse, or that the person on the other side of the case (the 'respondent') is considered a risk to children. Only if they have this evidence will their case be in scope for legal aid (see 4.4.3 below).

22 A 'party' to court proceedings is a person or organisation who is subject to litigation. This means that they are centrally involved in the case. A witness is not a party, for example. Someone who is a party will be entitled to: receive copies of paperwork submitted during the proceedings, attend court to hear evidence, have questions put to witnesses on their behalf, hear the submissions made and then the judgment given.

23 Part 1 of Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 lists the civil legal services which are in scope for legal aid.

4.4.3: LASPO reforms and the introduction of 'gateway evidence'

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO') made significant changes to legal aid, including what areas of law were in scope, the eligibility of those seeking it and the rates of paid work for solicitors. These changes resulted in substantial cuts to legal aid spending.

For family law, the most significant change was that nearly[24] all private children law matters were placed outside the scope of legal aid. Only those who have 'gateway evidence,' are considered in scope. Gateway evidence must prove either that the applicant has been a victim of domestic abuse or that the Respondent in the case poses a risk of abuse to children. The perpetrator must be identified as the Respondent in the case.

There is a very strict criteria for what is acceptable 'gateway evidence.' For example, to prove that the Respondent poses a risk of abuse to children, the applicant must have one of the following:

- Evidence of an arrest, caution, ongoing criminal proceedings or conviction for a child abuse offence
- Copy of court documentation proving that either an injunction to protect a child or a finding of fact in relation to child abuse was made by a court in the UK
- Copy of a social work assessment or child protection plan confirming that a child was considered at risk of abuse from the respondent, or a letter from children's services confirming the existence of such an assessment or child protection plan
- An application for a protective injunction and a prohibited steps order.[25]

Even if someone can provide gateway evidence to prove they are in scope for legal aid, they will still need to pass the Legal Aid Agency's means test and merits test. This applies to parents and others with parental responsibility for the child the private law proceedings are about. It applies to (prospective) kinship carers whether they are seeking advice and representation regarding pursuing a child arrangements order or special guardianship order; needing to respond to a parent's application for contact with their child or responding to an application to discharge a special guardianship order.[26] In all of these situations, unless the kinship carer has gateway evidence and passes the means and merits test then they are unlikely to receive legal aid.

Legal support where there are no private law court proceedings

There is a level of legal aid available to (prospective) kinship carers who need legal advice where there are no ongoing Family Court proceedings. A kinship carer raising a child under a private family arrangement but needing advice about whether to make an application for a court order is one example. The type of limited legal aid available is called legal help (level 1) private law.[27] It is limited to an initial meeting with a solicitor and any work flowing from that meeting. Someone will only be eligible to receive this if they pass the means and merits test (see 4.3.1).

24 Some cases remained in scope, including cases involving unlawful removal of children or when a person is seeking protection from domestic violence. In these exceptions, applicants must still pass the means and merits test.

25 Schedule 2 of *The Civil Legal Aid (Procedure) (Amendment) (No.2) Regulations 2017*; Statutory Guidance *The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 - Evidence Requirements for Private Family Law Matters*

26 A parent, child, or individual who had parental responsibility immediately before the making of an SGO, can only apply to discharge a special guardianship order if they have obtained leave from the Family Court, *Section 14D of the Children Act 1989*

27 There are different types of 'legal helps' available for family matters, depending on what the case involves. Legal help is a form of 'controlled work' which means that those providing the legal advice (normally solicitors' firms) must carry out an assessment of the person's means and merits themselves and claim the appropriate fee, without the Legal Aid Agency's involvement. However, providers regularly have their controlled work audited by the Legal Aid Agency who can recoup claims they consider to be incorrect or put notices or sanctions on providers' legal aid contracts. See the MoJ's *Guidance on Legal Aid Audits* for more information

Fees for legal help (level 1) private law

The fee for this private law legal help (level 1) legal aid is a national fee and is £86.[28] In ***some*** cases, when all work carried out under legal help (level 1) is completed, solicitors can continue with work under a family help (level 2). But the Legal Aid Agency have very strict criteria for which cases can be claimed under family help (level 2).[29]

Where it is possible for work to continue, the fees for family help (level 2) are £230 if based in London or £199 if outside of London. There is also a settlement fee available.

Many solicitor firms are unable to take these cases on because the renumeration is simply too low. Assessing an individual's means and merits involves a large amount of administrative work – particularly the means aspect which involves a solicitor calculating the client's income and capital and ensuring they have all appropriate financial evidence before they can even start work. For most firms, to take on these cases would mean working at a loss due the time involved in setting them up, and the very limited fee available at their conclusion. For kinship carers, even were they to access this form of legal aid, the extent of the assistance they can be provided with is extremely limited and will likely fall far short of the comprehensive legal advice and representation they will actually need.

4.4.4 Government reform of private law legal aid

Three years ago, in February 2019, the Ministry of Justice published the Legal Action Support Plan. Described as an action plan to deliver better support to people experiencing legal problems, this set out ambitious aims to make changes across the legal aid system, including in relation to family law. It included a welcome commitment to bring legal aid for (prospective) special guardians into scope, which would mean that those kinship carers would not need to have gateway evidence in order to get legal aid. They would still however need to pass the means and merits test. The effect of the proposed reform would be to allow prospective kinship carers who have been positively assessed by children's services to have legal advice and representation when seeking to secure a special guardianship order in private children law proceedings.[30] This was a significant step. Unfortunately, nearly three years on progress has stalled and this proposed reform has not been implemented.

4.5 Kinship carers and public children law

4.5.1 Public law explained

This concerns the relationship between a person or family, and the State. This may be outside of court proceedings, such as when children's services start a formal pre-proceedings process for a child. It can involve children's services applying to the Family Court for a court order in respect of a child. Examples include:

Care proceedings, where children's services ask the Family Court to approve a plan to keep a child safe and well in the short and long term and seek a care or supervision order

- Where children's services apply to the Family Court for a placement order so they can progress plans for a child to be cared for by prospective adopters
- Applications to deprive the liberty of a child under a secure accommodation order.
- Unlike in private law proceedings, children are automatically parties to all public children law proceedings.

28 The fees are set out in Part 1 of Schedule 1 of *The Civil Legal Aid (Remuneration) Regulations 2013*. In order to claim more than the fixed fee on any legal help and family help cases, a solicitor must show that their costs reach the 'escape fee threshold.' This means that if their costs, calculated at Legal Aid hourly rates, would be at least three times the national standard fee, they may be paid their entire costs (at Legal Aid hourly rates) *2018 Standard Civil Contract Specification, Specific Rules: Family*

29 *Costs Assessment Guidance: for use with the 2018 Standard Civil Contracts*

30 The action plan made no parallel provision for prospective special guardians in public law proceedings

4.5.2 The legal aid regime for early work with families

In this report, the term 'early work with families' is used to refer to children's services involvement with children and families at any time prior to a formal pre-proceedings process beginning. This may be work carried out as part of an early help offer which aims for agencies (health, education etc.) to work together to provide support to children and families as soon as problems emerge[31]. It may be work with families carried out under the *child in need* framework in England for example, where a child is thought to need extra support or services to help them to achieve or maintain 'a reasonable standard of health or development' and the family agrees to have services or support. Early work may take place in response to child protection enquiries and as part of a *child protection plan* developed where a child protection conference has decided that a child is suffering or is likely to suffer significant harm. Examples of early work with children and families include:

- Providing families with the services or support they need before problems escalate
- Preventative or educative work
- Convening a family group conference so the family can develop a plan to keep the child safe
- Exploring what support, or options for alternative care arrangements, are available within the wider family and friends network.

It is at these 'early stages' that children's services should be including family members in their work and decision making, for example through a family group conference.[32] They should be looking at what support those family or close friends can offer to the child and their carer, but also whether they could be alternative carers should matters escalate. Many family members are unlikely to be aware at these early stages about how children's services should be involving them. The table below gives an overview of the legal aid framework that applies.

Table 1: Early stage legal aid regime for public law matters

What is in scope?
Matters relating to a child in need plan, child protection plan or a section 20 voluntary agreement outside of court proceedings.[33]

Who may be eligible
The law does not limit who may apply (a prospective kinship carer could therefore seek this type of legal aid)

Does a means and merits test apply?
Yes, the person must pass the Legal Aid Agency's means and merits test to be eligible to receive legal aid at this stage. The merits test is demonstrating that there is 'sufficient benefit' to the client having regard to all the circumstances of the case.

Type of legal aid
Legal help (level 1)[34]. This covers an initial meeting with a client, follow-up advice and, where appropriate, corresponding and liaising with the local authority.[35]

Amount available
The standard fee for legal help (level 1) is £132.[36]

31 For further information about early help see: https://frg.org.uk/get-help-and-advice/what/early-help/

32 DfE (2014) *Statutory Guidance: Court orders and pre proceedings,* p.16

33 Some children in England (section 20 Children Act 1989) and Wales (section 76 Social Services and Wellbeing (Wales) 2014) are looked after in the care system under a voluntary arrangement. It is an arrangement that can be put in place without any court oversight. It is not a court order and children's services do not have parental responsibility for a child.

34 This type of very limited legal aid includes an initial meeting, follow up advice and negotiation with the local authority is also available in cases when children looked after in the care system or who has left the care system.

35 Legal Aid Agency (2021), The LAA Costs Assessment Guidance 2018, p.71

36 This fee is set out in Part 1 of Schedule 1 The Civil Legal Aid (Remuneration) Regulations 2013. See footnote 26 on escaping the standard fee.

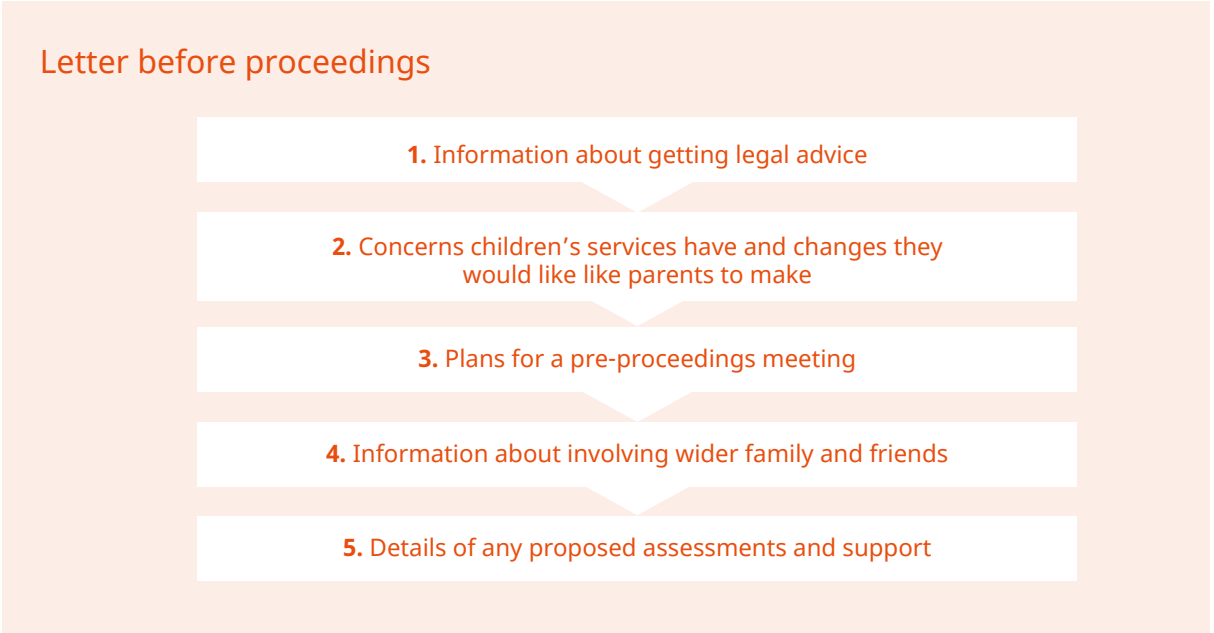
As with the legal help available in private law cases, which is explored earlier in this chapter, many solicitor firms do not take on these cases because the fees available are so low. A person's means and merits must still be assessed which is time consuming and ultimately means that for many firms, taking these cases means working at a loss because the amount of work involved for such a low fee. Again, the extent of the legal support that can be provided under this limited legal aid typically falls far short of what kinship carers need. There is also a risk that after taking on the work, the Legal Aid Agency do not agree with the means and merits assessment as carried out by the solicitor. The risk for the practitioners is that they may simply not get paid.[37]

4.5.3 The legal aid regime for the formal pre-proceedings process

Pre-proceedings is both the period of time and the formal process where children's services consider whether they need to apply to Family Court to commence care proceedings. The pre-proceedings process is sometimes described as a last chance for parents to make the changes needed so that they can keep their child safely in their care. The formal pre-proceedings process aims to:

- Clearly set out for parents what concerns children's services have
- Make clear what changes children's services would like the parents to make
- Identify and put in place extra help and services needed to support the family
- Assess and review the needs of the child and family
- Explore what help and support wider family and friends can provide
- Work in partnership with families to avoid the need for care proceedings to be started.

To commence the process, children's services must send a parent (and anyone else with parental responsibility for the child) a letter before proceedings setting out:



The recipients of that letter are eligible for a type of legal aid called family help (lower) (level 2). This allows a solicitor to offer advice and assistance, attend pre-proceeding meetings and negotiate with the local authority on their client's behalf. It does not cover legal representation in court proceedings. This type of legal aid offers limited payment for solicitors, who, in nearly all cases[38], receive a fixed fee of £365[39] for their time.[12]

37 See footnote 27 for more information about legal helps.

38 See footnote 28 on how more than the standard fee can be claimed.

39 Fee set by Part 1 of Schedule 1 of *The Civil Legal Aid (Remuneration) Regulations 2013*

Statutory guidance makes clear in the pre-proceedings process that family members should be explored 'to clarify realistic options for the child'.[40] And, that by identifying family members prior to starting care proceedings, the need for proceedings may be avoided.[41] Therefore, during the formal pre-proceedings process children's services should:

- Look at who in the family and friends' network can offer support to the child and parents, and work with the parents and family to explore this
- Look at who may be able to take on the care of the child if they can't be safely cared for by their parent or carer
- Arrange for potential carers to be assessed.

Unless a (prospective) kinship carer has parental responsibility for the child, they will not be eligible for non-means and non-merits tested legal aid at this stage. They may be eligible for legal help (level 1) if the pass the means and merits test. As explored at 4.5.2, legal help (level 1) offers a low fee, so low that many solicitors' firms are unable to take on cases using this funding. The work that it would be possible to undertake during the pre-proceedings process on the basis of the family help (lower) level 2 funding that is available to a parent or someone else with parental responsibility. (Prospective) kinship carers had better access to legal advice at the pre proceeding stage, it could help divert cases away from court or prevent family members being asked at the very last minute to look after a child when proceedings are initiated, with no help, advice or support.

4.5.4 The legal aid regime for care proceedings

There are different rules about legal aid for different types of public children law proceedings.[42] Care proceedings are the most common type of public children law court proceedings.[43] Starting care proceedings is the process of applying to the Family Court for a care order or supervision order[44], though the court can make other types of orders within these proceedings. When children's services make an application to commence care proceedings, they are inviting the Family Court to:

- Consider a plan to keep a child safe and well cared for immediately
- Make any court orders needed to help put that initial plan in place
- Decide who the child should spend time with or be in touch with during the proceedings. This includes who the child should see, how often and other such arrangements. This is often referred to as contact arrangements
- Decide what further information is needed to help the court make final decisions about the child's future care
- Make final decisions, at the end of the proceedings, about who the child should live with and stay in touch with.

Some individuals are entitled to be parties to care proceedings[45] and are automatically eligible for legal aid to be fully advised and represented. It does not matter what the person earns or how strong their case is. This is known as non-means and non-merits tested legal aid. The following individuals are eligible for this type of legal aid:

- Parents, including fathers without parental responsibility
- Any person with parental responsibility for the child who is the subject of the proceedings
- The child(ren) who are the subject of the proceedings.

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40 DfE (2014), *Statutory Guidance: Court orders and pre proceedings, p.11.*

41 DfE (2014), *Statutory Guidance: Court orders and pre proceedings, p.11.*

42 In most other public children law court proceedings, parents or those with parental responsibility are only eligible for legal aid if they pass the Legal Aid Agency's means and merits test

43 *CAFCASS Official Demand Statistics Public Children Law Cases April 2021- March 2022*

44 Orders made under *section 31 of the Children Act 1989*. A care order is a court order that places a child in the care of children's services who obtain parental responsibility for the child. A supervision order is a *court order* that places a duty on children's services to 'advise, assist and befriend' a child and their family for a specified time.

45 A *'party'* to court proceedings is a person or organisation who is subject to litigation. This means that they are centrally involved in the case. A witness is not a party, for example. Someone who is a party will be entitled to: receive copies of paperwork submitted during the proceedings, attend court to hear evidence, have questions put to witnesses on their behalf, hear the submissions made and then the judgment given.

The Family Court has powers to make someone who does not have parental responsibility for the child a party to proceedings. A (prospective) kinship carer in this situation will be in scope for legal aid but will only be eligible to receive it if they pass the Legal Aid Agency's means and merits test. If they do not pass the Legal Aid Agency's means and merits test, and cannot afford to pay privately for legal representation, then they are left to navigate the family justice system alone. This means representing themselves at court hearings, preparing their own written evidence for the court and making important and life-changing decisions about their, and the child's, future without legal advice.

The Family Court can also bring someone into proceedings as an 'intervener'. This is so they can participate fully in a particular part of the proceedings or to be involved in relation to a particular issue. Once that is dealt with, they will cease to be involved as an intervener in the proceedings. Someone in this situation will also need to pass the means and merits test in order to receive legal aid.

Section 32(1) of the Children Act 1989 sets out that care proceedings should be concluded within a 26-week timetable. The Family Court does have power to extend the timetable [46] and senior judges have made clear that the timetable the court sets must be the one that is right and fair for that case - '... the 26 weeks is not, and must never be allowed to become a straightjacket'[47]. Nor should it lead to inadequate explorations of the realistic options for a child - 'justice must never be sacrificed upon the altar of speed'.[48] Despite this, the 26-week timetable can result in the exploration and assessment of wider family and friends being rushed to fit tight deadlines. This is especially the case where local authorities have not carried out this work at an early stage or as part of the formal pre-proceedings process.[49] For some prospective carers this means they are having to digest information about the circumstances leading to the proceedings and about assessment processes at very short notice. For others, their assessment reports or support plans will become available only very shortly before the court will be considering final plans for the child and looking to conclude proceedings.

A lack of proper and effective exploration of the wider family and friends' network prior to proceedings commencing can also result in kinship carers being asked to step in at the last minute to care for a child at the outset of proceedings, despite having no prior involvement or knowledge of the issues or that this would be asked of them. This can be stressful they are rarely offered legal advice at this stage about what type of interim order may be appropriate or what type of financial support might be available to them.

4.5.5 Guidance and case law regarding kinship carers and care proceedings

The Public Law Working Group (PLWG) was set up by the President of the Family Division and High Court of England and Wales, Sir Andrew McFarlane to safely divert children from public law proceedings, and to ensure the timeliness and fairness of court decisions. In June 2020, the Public Law Working Group (PLWG) published 'Recommendations to achieve best practice in the child protection and family justice systems: Special guardianship orders.' The PLWG highlighted that often prospective special guardians are 'thrust into the challenge and complexity of care proceedings, with no preparation, independent legal advice or access to the time and space to think through what is being proposed.' It says that this is likely to make assessments 'seriously compromised'. The report recommends that a plan be put in place after a prospective special guardian has received a positive assessment which must address how they will be involved in any proceedings, including their party status and their access to independent legal advice.

The Family and appeal courts have made clear how important it is for kinship carers to have advice. In the case of P-S (Children) [2018] EWCA Civ 1407, the Court of Appeal made clear that when a special guardianship order is being considered within care proceedings, a formal application for that order should usually be made (see paragraph 56 of the judgment). Prospective kinship carers who have not had any access to legal advice cannot be expected to know that this should be done. The Court of Appeal recognised this, and further stressed the importance of these relatives and friends having proper access to legal advice and representation.

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46 The court may extend the time limit up to 8 weeks at a time if they consider that 'the extension is necessary to enable the court to resolve the proceedings justly'. See *section 32(5) Children Act 1989.*

47 Sir James Munby, the former President of the Family Division in his seventh '*View from the President's Chambers*'

48 Mrs Justice Pauffley, Re NL (A Child) (Appeal: Interim Care Order: Facts and Reasons) [2014] EWHC 270 (Fam)

49 There is evidence of significant variations in the timeliness and quality of local authority practice in early and pre-proceedings work with families. For example, it is largely a postcode lottery as to whether families are offered an Family Group Conference as a means to explore the wider family and friends' network

4.5.6 Reform of legal aid for public children law

Despite the case law and the recommendations of the Public Law Working Group, government have not given any indication that they will be making any changes to improve the availability of legal aid for kinship carers involved in public law proceedings. The means test review proposals (see 4.3.2) may improve the situation for some kinship carers who do not have parental responsibility and are therefore subject to a means and merits test. Many are still likely to fail the means test given the low income and capital thresholds, and in the event that they do meet the means criteria, the merits test must also be passed.

The plans outlined in the Legal Action Support Plan, highlighted earlier in this chapter (see 4.4.4), relate solely to applications for special guardianship orders in private children law proceedings. This commitment has not been matched with a recognition of the many special guardianship orders pursued and made in public children law proceedings. The majority of special guardianship orders are made within the context of public law care proceedings, rather than within private children law proceedings.[50]

4.6 Exceptional Case Funding

In response to concerns regarding the severity of LASPO reforms, the government included provision for funding to be made available for some cases that would otherwise not be in scope. This is called 'Exceptional Case Funding' and provides that if an individual's matter is not within scope for legal aid, they may be able to get funding if they can prove that their case is exceptional. This will only be granted if the person can show that not being granted funding will be a breach of their Convention rights (within the meaning of the Human Rights Act 1998) or their rights to legal services under EU law, principally under the Charter of Fundamental Rights of the European Union.[51]

Any person applying for this will still need to pass the Legal Aid Agency's means and merits test. It is difficult to obtain funding under this scheme. When the scheme was first introduced, very few applications for this funding were granted. In the year 2013 to 2014, less than 2% of applications relating to family law were granted. This affected the number of people applying, with the number of applications halving within two years of the scheme's existence. The most recent Ministry of Justice statistics suggest that more applications for exceptional case funding are being granted. In 2020-2021, 170 out of 432 family law related applications were granted.[52]

Successful applications are likely to be those where the area of law is complex or where the applicant has additional needs that may make it difficult for them to put their case as litigant in person, for example if they have a learning disability or a mental health condition.[53] Without these additional characteristics, applications are unlikely to be granted. In addition, the funding is still subject to the means test. For these reasons, most kinship carers are unlikely to obtain legal aid through this route.

4.7 Local authority support to access legal advice

When a children's services department is proposing that a (prospective) kinship carer should become a long-term care option for a child, they may offer to fund some level of independent legal advice for the (prospective) kinship carer (be that in private or public children law matters). There is no legal requirement for local authorities to do this and how much legal advice a local authority is prepared to fund varies. Any funding offered is entirely discretionary therefore and will most often only constitute no more than a one-off meeting with a solicitor. Further, local authorities often limit the funding to two hours at Legal Aid rates which can be as little as £131.68 plus VAT. This can affect which solicitors' firms are able to assist.

Crucially, this form of local authority funded advice is not available for (prospective) carers who have not been positively assessed (whether at initial or full assessment stage) or whose position does not broadly align with that of the local authority. For such carers – including those who may have legitimate challenge to bring regarding assessment practice, quality, conclusions or support planning – they are unlikely to have access to advice (or representation) via the legal aid framework. Any eligibility for legal aid would be

50 MoJ, (2020), Family Court Statistics Quarterly: October to December 2020

51 Under *section 10 of the Legal Aid Sentencing and Punishment of Offenders Act 2012*

52 MoJ (2022), Quarterly *Legal Aid Statistics for October to December 2021*

53 See Public Law Project 'How to get legal aid Exceptional Case Funding in family law: https://publiclawproject.org.uk/exceptional-case-funding/

to legal help (level 1) and subject to means and merits testing. As discussed elsewhere in this chapter, the low rate of this funding means that in practice many high street solicitor firms are simply unable to take on work under this regime. Carers in this situation may draw on specialist voluntary sector advice services with nuanced knowledge and tailored resources for kinship carers but as demand far outstrips resource many struggle to access this too (see 6.4). Unless such services are funded to provide follow up advice or take on some casework, they may not be able to provide the ongoing assistance prospective carers need at this stage.

Some relatives and friends are encouraged by children's services to bring private children law proceedings themselves by applying for a special guardianship order which effectively avoids the need for children's services to begin care proceedings. Some local authorities may agree to fund legal representation for the (prospective) kinship carers at legal aid rates in this situation if they are not eligible for legal aid, but again this is dependent on the individual children's services department and is entirely discretional. Even within the same local authority, a children's services department may agree to fund one kinship carer's application but not another.

Statutory guidance requires local authorities to publish a policy 'setting out its approach towards meeting the needs of children living with family and friends' including what advice is available to families from independent organisations.[54] Despite this, many local authorities do not have a publicly available policy or procedure setting out when they will fund legal advice. Where policies do exist, they are often unclear and vary greatly across the country.[55]

54 DfE (2011), *Family and Friends Care: Statutory Guidance for Local Authorities*

55 Parliamentary Taskforce on Kinship Care (2020), 'First Thought Not Afterthought' Report

Evidence from kinship carers

"It just beggars belief that the system that we have just fails to assist those people that are doing the right thing by the children. I think for myself, that was the most shocking part of going into this process, was finding out how little support there was for you. It is the legal labyrinth, it's the language, it's the procedures, completely alien to most people."

Andrew Gwynne MP, APPG Chair and kinship carer

The experience of kinship carers and the children they raise has been at this heart of this inquiry from the outset. In this chapter we share some of the details from kinship carers who gave oral evidence to the inquiry. We also analyse the evidence received from kinship carers across England and Wales who completed the survey carried out by Family Rights Group.

At our first oral evidence session in February 2022, we heard personal testimony from four kinship carers. They had come to kinship care in varying circumstances and followed different journeys to securing a legal order to formalise the kinship care arrangement. For all four, the availability of legal advice and representation was crucial to their being able to understand their rights and options and to secure the best outcome for the children. The four accounts vary in how and when legal advice and representation were provided, including examples of the availability of legal assistance often being dependent on the goodwill and foresight of individual legal practitioners. So too were there marked variations in the extent to which the state (in differing guises) expected kinship carers to meet legal costs. The evidence received by the inquiry and analysed in the following chapters shows this variation is widespread across the system.

The survey data, completed by 473 carers across England and Wales, makes plain that the experiences of the four carers giving oral evidence were far from isolated examples. They are symptomatic of a child welfare and family justice system that does not sufficiently support (prospective) kinships carers to make informed decisions about children they are stepping forward to provide a loving home for.

5.1 Kinship carers in their own words

The experiences and insights of carers who spoke to the inquiry:

Clare

Clare and her partner have been raising Clare's niece and nephew since January 2016 after her sister became unable to look after them. She described the challenges of not initially having parental responsibility for the children and her fight to get the local authority to recognise their responsibilities for supporting the arrangement.

"The local authority did not accept their duty to the children, and I did engage a solicitor at my own expense. I felt I had to give up my job…because the children needed so much care, particularly my little one who was repeatedly admitted to hospital.

"Trying to explain to hospital staff why you have this child without any documents or official support whilst that child is struggling to breathe is a horrible experience. They call the police, they come and interview you in the middle of the night, in a curtained room where everyone can hear, while your child gasps in a cot."

Lorna

Lorna is a kinship carer to her twin granddaughters, the children of her youngest adopted daughter, due to their mother having learning difficulties and mental health issues. Lorna was positively assessed as a kinship carer for the children during care proceedings but the local authority provided no legal support and she initially had to represent herself in court. Only once the court made an order which gave her parental responsibility was the door to accessing legal aid really opened. She was then able to secure a suitable support package.

"My only source of advice and support was the Family Rights Group advice line which I contacted frequently. It appears that as the local authority were supporting my application to become a kinship carer no one believed that I required legal advice or representation before or during the court proceedings. This worried me greatly.

"Without me knowing what to ask for, the Judge granted me an interim child arrangement order so that I would have parental responsibility and advised the local authority that this would mean that I could approach a solicitor and be entitled to legal aid."

Shanayd

Shanayd is a kinship carer to her two-year-old niece. The child's mother faced difficulties from an early age and was placed into care, leading to many problems in life including mental health difficulties. At four months old Shanayd's niece was in foster care until the court ordered the local authority to explore whether relatives could help.

"Being assessed was a frightening experience, having never been involved with children's services. I was a working mother but did not have enough money to approach a solicitor privately. There was also a level of mistrust within our family as we knew the local authority had our details on file and had not sought to approach us...I tried to get legal advice from different websites but unfortunately was unsuccessful and I was too frightened to challenge the local authority because I thought that they might give me a negative assessment and that my niece could be lost to adoption.

"When I first attended court, I was so worried as I did not know what to do and how to do it. However, I met a duty solicitor at court that day. She advised me that I needed legal representation as the local authority had successfully assessed me and was concerned that I did not know anything about the proceedings or the order I was seeking to apply for... The solicitor agreed to represent me for that hearing. She wanted to apply for an interim child arrangements order so that I could be joined as a party, get legal aid and be represented throughout."

Stuart

Stuart and his partner are kinship carers to three children of a family friend who had died. The local authority initially were not prepared to recognise Stuart's family's need for support, regarding it as a private arrangement rather than a placement. Stuart and his partner initially represented themselves at an emergency Court hearing but when the case progressed to the High Court he personally paid for legal representation.

"The local authority finally agreed to initiate care proceedings more than 4 months after their mother died. This was the first phase of our fight to be recognised as kinship carers and for proper financial support, whilst caring for three grieving children. We spent almost 18 months attending 11 court hearings, 8 in the High Court, until we were finally able to receive our special guardianship order. Time that should have been spent concentrating on our family.

"My partner and I had our own financial responsibilities but found a way to borrow the money for legal representation until we got legal aid. I don't know what would have happened to our children if we hadn't been able to get that legal representation, or if the local authority had held out for longer and we'd faced the choice of even more debt."

5.2 Findings from the survey of kinship carers

The experiences and insights of kinship carers who completed the survey

473 kinship carers completed a survey about their experience of being kinship carers which was conducted by Family Rights Group. The respondent kinship carers were raising a collective total of 742 kin children. The majority of carers were aged between 45 and 75. 55% were raising one child and 43% were raising 2 or more. 68% were grandparents and the remainder a range of other relations or friends. 84% of the children and 93% of carers were white. A quarter of carers (25%) and almost two thirds of the children (58%) had disabilities or additional needs. A large majority of carers had either a special guardianship order or child arrangements order for the children or were kinship foster carers caring for a child under either a care order or a voluntary arrangement (under section 20 of the Children Act 1989 or section 76 of the Social Services and Well-being (Wales) Act 2014 . Full survey data is included in the appendix.

5.2.1 Sources of advice, funding and quality

- Nearly 4 in 10 (38%) of the kinship carers who responded to the Family Rights Group survey had NOT received legal advice about their rights and options for their kinship children. Only 55% had received legal advice.
- For the vast majority of respondents who had received legal advice, (83%) had received it from a high street solicitors firm. Other sources of support included Family Rights Group's advice service, Citizens Advice Bureau, assistance from other national and local third sector organisations, family and friends and online social media groups.
- When asked how the costs of this legal advice were covered, a quarter (25%) had paid for some or all of the costs themselves. 16% had received part or full payment through legal aid, 56% had received part or full payment by the local authority, 14% had received free provision such as via Family Rights Group Advice Line. 18% indicated they personally paid the costs in full, with a further 7% paying part of the costs, and another 3% getting help from family or friends.

Table 2: Sources of legal advice kinship carers received

Options (respondents were able to select multiple options)	Respondents	Percentage
It was provided for free (e.g. Family Rights Group Advice Line)	38	14%
The local authority paid the costs in full	115	43%
The local authority paid a contribution	34	13%
I qualified for legal aid for some of the costs	11	4%
I qualified for legal aid for all of the costs	32	12%
I paid the costs in full	49	18%
I paid part of the costs	20	7%
My family and friends helped pay the costs	9	3%
Other	14	5%
Total respondents	268	

Respondents had the option to provide additional explanatory comments. These comments indicated the very wide range of costs kinship carers had experienced having to meet. Provision of legal advice where some of the costs were covered in some way, ranged from 30 minutes to two hours' worth of free legal advice , or up to the value of £275.

"Only two hours paid advice by the local authority, I bore the rest of the cost, which was substantial"

Even where the local authority had paid costs in full, in some cases it was after a significant battle:

"The local authority paid costs in full that were incurred prior to legal aid qualification, after a long fight not to pay them."

59% rated their legal adviser's knowledge on kinship care highly, 18% rated it low, with the remainder falling in between.

5.2.2 Experiences of advice and representation for court proceedings

For 79% of respondents, one or more of their kinship children had been the subject of family court proceedings for both public and private proceedings (see footnote for an explanation of the distinction).[56] Of those, 32% were represented all of the time and a further 27% at least some of the time. 30% had to self-represent at least some of the time.

Explanatory comments are illuminating. Many carers indicated they were not party to proceedings[57], although some were still able to attend court and were, in the event, asked questions by the Judge. When this later happens it can be challenging for both the carer and for court proceedings, when the relative or friend is participating without representation. They are often only invited to participate for a small part of the proceedings, so are unaware of what has been discussed beforehand.

"I wasn't included in the court proceedings I had to stay outside. I wasn't informed I wasn't approached to take him even though they knew I had him most weekends and they would ring to check he was with me."

"We were not represented at all, although we were able to go into the court and the magistrates did ask us questions which we answered the best to our ability"

Many also suggested their local authority had told them they did not need to be represented, or that the local authority were representing them.

"Local authority took the case to remove the child from mother and placed with us, we weren't represented as local authority supported the special guardianship order and child living with us"

"We weren't involved in the proceedings at all, we were told we didn't need to be involved by social services."

"We were told we didn't need a solicitor by the local authority but I think we would have benefited from having one"

Carer's experiences of legal costs in court proceedings

Several mentioned the high costs of securing legal support with their own resources:

"Every other party was represented by a barrister but we were not as we couldn't afford the costs of doing this"

"I had a barrister gain me entrance to the court proceedings but then had to represent myself as this cost £4000 and I had no savings left"

"We were not entitled to any legal support unless funded personally and we were given advice that this would cost in the region of £30,000 which we were not in a position to afford. All other parties received free legal advice and barrister representation throughout the process."

The survey asked kinship carers who were represented by a solicitor or barrister in court, how their costs were covered. 40% indicated their costs were covered in full by the local authority and a further 6% in part. Only 19% qualified for legal aid for all of the costs and a further 10% in part. Almost a third (28%) of respondents paid some contribution to the cost of legal representation, including those reliant on family and friends to help.

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56 Private children law is matters concerning private individuals, usually the relatives of a child; public children's law is state involvement with children and their families.

57 A 'party' to court proceedings is a person or organisation who is subject to litigation. This means that they are centrally involved in the case. A witness is not a party, for example. Someone who is a party will be entitled to: receive copies of paperwork submitted during the proceedings, attend court to hear evidence, have questions put to witnesses on their behalf, hear the submissions made and then the judgment given.

Table 3: How the costs of legal representation were covered		
How were the costs of the solicitor/barrister in court covered:	**Respondents**	**Percentage**
The local authority paid the costs in full	74	40%
The local authority paid a contribution	10	6%
I qualified for legal aid for some of the costs	17	10%
I qualified for legal aid for all of the costs	32	19%
I personally paid for some of the costs	14	8%
I personally paid for all of the costs	27	16%
Family and friends paid for some or all of the costs	6	4%
Total respondents	168	

Respondents could tick multiple options.

When asked about their overall personal contributions to the costs of legal advice, court fees and legal representation, more than one in three (37%) indicated they had to pay something towards legal costs. Explanatory comments suggest that for those who did not have costs to pay, it was often because they were not a party to proceedings.

Where kinship carers have had to personally pay towards the costs of legal advice, court fees and/or legal representation, costs could be substantial. 47% had costs up to £1000. 27% has costs between £1001 and £5000. For 16% of respondents, costs totalled between £5001 and £10,000. 9% of respondents who had personally paid towards the legal costs, ended up with a bill of over £10,000.

Table 4: Kinship carers' personal contributions towards the costs of legal advice and representation		
	Respondents	**Percentage of those with costs**
Nothing	272	-
Under £250	26	16%
£251-£500	22	14%
£501-£750	17	11%
£751-£1000	12	7%
£1001-£1500	8	5%
£1501-£2000	12	7%
£2001-£3000	13	8%
£3001-£4000	8	5%
£4001-£5000	4	2%
£5001-£10000	26	16%
£10001-£20000	4	2%
£20001-£30000	4	2%
£30001-£40000	1	1%
£40001-£50000	0	0%
£50001-£60000	1	1%
£60001-£70000	0	0%
£70001-£80000	1	1%
£80001-£90000	1	1%
£90001-£100000	2	1%
More than £100,000	0	0%
Total respondents	434	

5.2.3 Views about the need for legal advice and representation

82% of respondents did not feel they knew enough about their legal options to make an informed decision about the best options for their kinship child.

"We were not made aware of possible other options available to us. Also we're not made aware of the financial implications or making sure we were covered for bringing this child up or for any extra support we may have needed over the years."

"The whole process was rushed, we had no idea we wouldn't potentially receive financial support once the SGO was approved. The foster care allowance wasn't means tested yet the SGO was, leaving us out of pocket."

"I knew nothing but was told to seek legal advice. I was like a rabbit in headlights."

Fewer than half of respondents (48%) were satisfied with their current legal arrangement and 35% said they were not satisfied. Comments suggest the primary reasons for this were in relation to entitlement to support, particularly comparing special guardianship orders to kinship foster carer, and also issues in relation to parental responsibility, especially in cases where parents have since repeatedly challenged arrangements in court.

"No support as a special guardian. Lots more resources as a foster carer"

"There is no protection whatsoever for the special guardian or placement. It is very difficult to get appropriate representation and extremely costly and stressful to defend claims from the birth mother based fully on falsehoods. This has had a devastating affect on us and the child"

5.2.4 Employment and financial support

Kinship carers responding to the survey were also asked questions about their employment status and financial situation.

- Only 18% of respondents were in full time work and only a minority (41%) were in full or part-time work. 25% stated they were unable to work due to caring responsibilities, 21% were retired and 10% reported that they were unable to work due to ill health.
- Half (52%) of kinship carers previously in work gave up their job to take on the kinship care children. A further 29% of those in work reduced their hours.

For a majority of kinship carers, taking on the child has impacted their employment situation and this will therefore have had consequences for their household income. This has bearing on a carer's capacity to then afford any legal costs, on top of the additional costs they are already paying to raise the children. Those carers who are retired are likely to have even lower levels of disposable income and may already be drawing on savings to meet the costs of raising the child.

Entitlement and access to practical and financial support for the child and the kinship carer, is largely dependent upon the type of kinship care arrangement in place. In this respect, receiving legal advice about their options and the consequences of those decisions can significantly impact on the support available to carers and their children.

- Three quarters of kinship carers who responded to the survey (73%) were receiving a regular local authority financial payment or allowance arising from/related to the kinship care arrangement. A quarter of respondents (25%) were not. Survey respondents included a higher proportion of kinship foster carers and special guardians than the wider kinship population, so it is likely that the wider kinship care population are less likely to be receiving support than this sample.

- Carers were also asked whether any change in a child's legal status whilst they were with living with the carer, had affected the financial support received from children's services. Of those respondents whose child's legal status had changed, a third (34%) said it had affected the financial support they receive from children's services.

A number of kinship carers reported that they had fostering allowance for the kinship child but the amount they received from the local authority reduced or stopped altogether when a special guardianship or child arrangements order was granted.

"Received fostering allowance but nothing after the special guardianship order was granted."

Carers described the further implications of this:

"Foster allowance ended on the day the special guardianship order was awarded. I then had to claim universal credit and that stopped housing benefit and existing child tax credits for eldest three children. It plunged the family finances into a crisis."

"They reduced the payment from kinship (foster carer) to special guardianship order allowance by £60 a week. They took away the childcare they paid for."

One carer described the very concerning conditions under which she agreed to a special guardianship order:

"We were receiving foster payments until the special guardianship order was granted. Then payments were reduced. We were told (by the local authority) if we didn't accept the special guardianship order, the child would be put for adoption."

Nearly three quarters (72%) of kinship carers said that becoming a kinship carer had caused them financial hardship. Only 1 in 7 said it hadn't.

Evidence from advice and legal sector

"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."

Association of Lawyers for Children, written evidence

Alongside the evidence from kinship carers set out in the previous chapter, the inquiry has received evidence from legal practitioners engaged in work relevant to the inquiry. The inquiry has also received oral and written evidence from organisations representing or supporting lawyers working in relevant fields. Data secured from parliamentary questions concerning the legal aid framework has been analysed. We also consider analysis of anonymised data of kinship carers and prospective carers who have contacted Family Rights Group's advice service. In this chapter we present our analysis of this body of evidence and share extracts from the submissions and parliamentary responses.

6.1 Common challenges across public and private law

The insights presented here span the fields of children's private and public law as well as private and local authority practice. Though private and public law children's cases differ in their nature and process, data from legal practitioners and organisations indicated some common challenges that cut across both legal areas, even if manifesting in slightly different ways.

First, the legal evidence analysed here further details the nature and extent of the challenges kinship carers face in simply accessing legal advice and representation. Some of these arise from the parameters of the legal aid regime itself. Other difficulties are related to practical barriers associated with means testing as well as carers not being party to care proceedings and not having the legal advice to know they could be. Second, barriers to carers gaining adequate understanding of specific types of kinship care arrangement and their implications for practical and financial support were highlighted as a core, systemic challenge. Third, the evidence highlighted a lack of legal advice for kinship carers regarding support plans and packages and the significant consequences of this for them and the children

6.1.1 Barriers to informed decision making about type of arrangement

Legal contributors expressed significant concern that many kinship carers are not well placed to make informed decisions regarding the best kinship care arrangement for them and the child they are/will be raising. A particular concern advanced was that kinship carers are often unaware of the practical and financial support implications of pursuing (or agreeing to) one type of kinship care arrangement verses another. Legal practitioners emphasised the vulnerability of carers to pursuing private law orders while unaware of the disparities in support compared to a kinship foster care arrangement. The evidence received also foregrounded the power imbalances between kinship carers, who are having to proceed without legal advice or adequate information, and personnel within state services.

The importance of tailored specialist advice on this topic from the voluntary sector is covered in 6.4.7.

What kinship carers said:

Analysis of survey data found that fewer than half of the survey respondents (48%) were satisfied with their current type of kinship care legal arrangement. 82% of survey respondents also felt they did not have enough information about their legal options when taking on the child.

Explanatory comments made by survey respondents highlighted a particular tension for kinship carers who had first become kinship foster carers for a child and later secured a special guardianship order. Under the former, the child is a looked after child and they and their carer are entitled to a range of support, including a financial allowance at national foster care rates and assistance to meet the child's health, education and emotional needs and duties to support contact arrangements between the child and other family members. Support for children subject of special guardianship orders is much less certain, with even whether to assess the need for support services (including financial support) being discretionary unless the child was looked after in the care system immediately prior to the special guardianship order being made. And whether or not to provide a regular financial allowance being at the discretion of each local authority.

The Association of Lawyers for Children ('ALC' hereafter) highlighted the need for kinship carers and prospective kinship carers to have independent legal advice to make an informed decision about the legal arrangements being proposed:

"If legal advice is not accessed they [kinship carers] 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."

In order to secure the best for a child, (prospective) kinship carers may need to both understand the different forms of kinship care arrangements but also be in a position to challenge the approach pursued by the local authority. To do so they would need legal advice setting out their options and the consequences. The ALC shared an example of one such situation:

"... 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."

In her oral evidence, Rosie Turner from Ridley & Hall reflected on the power imbalances between kinship carers and the state and how the absence of legal advice at a relevant and early stage exacerbates this:

"We have to remember, as we've heard from some kinship carers today, that the nature of being a kinship carer is that often it's grandparents' first experience with social services. They're so frightened of offending the local authority and quite understandably panic that their grandchild is going to be removed into foster care... They apply very quickly to the court for special guardianship order, at which point, they're often left with very little support."

And:

"We've seen and heard [in practice] of local authorities railroading kinship carers into making an application for special guardianship without encouraging any legal advice or having any discussions around support. Sometimes even funding and paying for the application itself."

Kinship carers may not be aware that they can make an application to the Family Court for a legal order at all. Even if aware that this is an option they may be uncertain about which order to pursue, what is involved or how to go about it. This can mean that some carers simply do not make applications. Others may delay in doing so or find that they have not sought the order that is more appropriate to the child's and their situation. As ALC told the inquiry "a lack of legal support may lead to undue delay in applying for a legal order or inappropriate applications being made."

6.1.2 Lack of legal advice regarding support plans and packages

The difficulties kinship carers and prospective carers face in securing suitable support packages, particularly financial support, in both private and public law contexts, was something raised by many evidence givers. For a carer to effectively make the argument for support, they require sufficient knowledge of the child's needs, which often isn't the situation if they are not privy to all the details of the case. They also require an understanding of what they can ask for and how to argue for it, which requires legal advice and representation.

ALC said:

"...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."

Research has shown children in kinship care are more likely to have special educational needs and disabilities than the wider child population.[58] Reflecting on the challenges kinship carers face in securing additional support for these children, Samantha Little giving evidence on behalf of Resolution said: **"The other difficulty for many carers is the level of special needs that children have, which is not only emotionally exhausting, but practically exhausting. But also they need very specific advice and help about how to look after their children."**

Rosie Turner also highlighted the difficulties that kinship carers face accessing bespoke support when raising/seeking to raise children with additional needs: **"...there is also a complete lack of support for children that require specialist therapeutic services. Looked-after children under a care order are classed as a priority for support services. But you could have the same child with the same needs under an SGO, and they would not have the benefit of priority services. The Adoption Support Fund is available for previously looked after children, but there's just no guarantee as to how long that will be available for."**

6.2 Legal evidence in relation to private law

In this section we set out the inquiry's analysis of the legal evidence received in relation to private law proceedings. As explained in Chapter 4, private law proceedings are cases in the Family Court between private individuals, usually relatives of a child. A private children law application is not brought by a state agency and children's services will not be a party the proceedings. They may be involved in providing information or reports to assist the court. Sometimes children's services encourage kinship carers to bring private law proceedings themselves effectively avoiding the need for children's services to begin care proceedings.

Later, in **section 6.4.9**, we cover voluntary sector advice in regard to private law.

6.2.1 Availability of legal support in private law matters

There was consensus among practitioners contributing oral and written evidence to the inquiry that the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 had been to remove the vast majority of kinship carers and prospective kinship carers from the scope of legal aid when seeking to bring private law applications.

Cris McCurley, Partner at Ben Hoare Bell LLP presenting on behalf of the Law Society, told the APPG:

"Essentially, pre-LASPO, if a kinship carer was financially eligible - and I'll come back to the point of financial eligibility, because that's problematic as well - they could get legal aid for any and all family issues providing they passed a merits test. After LASPO, essentially no private family law is in scope, unless the applicant can get over a very high evidential threshold and prove that they are a victim of domestic abuse, and that their opponent in the case is their abuser. Kinship carers can get legal aid to apply for special guardianship orders providing they satisfy the criteria. But not for the majority of ongoing private family cases or care proceedings."

58 Hunt J. (2020), *Key findings from the last two decades of UK research on kinship care*

Association for Lawyers for Children concurred: **"The LASPO criteria is of course very strict, and many prospective special guardians are unable to provide the right evidence to enable them to secure a legal aid certificate."**

Data secured from a parliamentary question tabled by Andrew Gwynne MP shows that in 2020/21 there were only 165 successful applications for legal aid by prospective special guardians in private law proceedings.[59] This compared to a total of 1164 new private law special guardianship order applications in the calendar year 2020.[60] This is an area where the Ministry of Justice has recognised current provision in respect of kinship carers is insufficient and has proposed changes to bring more, but not all, kinship carers into scope. As stated in the Ministry of Justice's 2019 Legal Action Support Plan:

"We have heard evidence about other vulnerable groups for whom legal aid funding may be appropriate, but who may not currently be able to access it easily. We will bring forward proposals to expand the scope of legal aid to include special guardianship orders (SGOs) in private family law....Ordinary care proceedings are in scope of LASPO, but SGOs are not unless there is risk of abuse to the child, despite the fact that such orders are often made as an alternative to care orders or adoption orders. We will bring forward proposals to change this."[61]

It is important to note that progress on delivering the commitment in the 2019 Legal Action Support Plan has since stalled. While the Government recently confirmed they remain committed to the proposal[62], no timeline has been given and parliamentary consent will be required.

Evidence givers welcomed the Ministry of Justice's commitment to extend the scope of legal aid as an important step forward but expressed concerns about the legal support continuing to be means tested. The inquiry heard that the means test is a significant barrier for many kinship carers, particularly those who own their homes. Samantha Little of Russell Cooke, giving evidence on behalf of Resolution said:

"It's an improvement but no it doesn't go far enough. I think in particular, the retention of the means test for older kinship carers is a real problem, because they will usually fail them. The thresholds for legal aid are not high at all and they will usually fail them so they won't be in any better position than they were before."

The Law Society made a similar case in their written evidence:

"Many kinship carers, particularly older carers including grandparents, have limited income, but do own their own home, or have a small pension and may have less expenses. This does not mean however that they have access to the funds necessary to instruct a solicitor to advise and represent them on a private basis, particularly in contested proceedings where experts may be instructed at significant cost but would likely leave them falling outside means-tested legal aid."

59 Source: Response (15 July 2021) to a written Parliamentary Question from Andrew Gwynne MP https://questions-statements.parliament.uk/written-questions/detail/2021-07-12/31348

60 MoJ (2021), ***Family Court Statistics Quarterly: October to December 2020***

61 MoJ (2019), ***Legal Support: The Way Ahead***, p.13.

62 Source: Response (22 July 2021) to a written Parliamentary Question from Andrew Gwynne MP https://questions-statements.parliament.uk/written-questions/detail/2021-07-19/35563

The findings of the survey summarised in chapter 5 and wider research [63] point to kinship carers being less financially well off than unconnected foster carers and the wider population. Their economic circumstances are often impacted by the child coming to live with them, particularly as more than half have to give up work or reduce their work hours. Nearly three quarters (72%) of kinship carers responding to the survey said that becoming a kinship carer had caused them financial hardship. Despite limited financial resources and as highlighted by evidence givers, many kinship carers still fail the means test for legal aid by virtue of owning their own home or having savings or pension income. The flowchart in Appendix A sets out the means test in more detail.

The inquiry heard how local authorities can sometimes provide financial support for kinship carers to receive legal advice when they are applying for a private law order to secure the child in their care. This often also averts the need for care proceedings. In written evidence, Lawyers in Local Government told the inquiry: **"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."**

We cover this in further detail in section 6.3.4 below.

6.2.2 Barriers to pursuing private law orders to formalise kinship care arrangements

The inquiry heard about the challenges kinship carers can face in bringing private law applications. This was particularly so when they don't qualify for legal aid or don't have the financial resources to pay for legal support privately. Some challenges concerned the lack of knowledge and experience of the family justice system, others about the emotional stresses and strains of even pursuing legal aid applications and in turn court orders, especially when having to go up against family members in court.

Samantha Little said: **"When we talk to kinship carers, they have no idea, most of them haven't been to court. They don't know how to make an application. They don't know how to go to court. They don't know what's going to happen when they when they are in court. And we're expecting them to just go and secure these orders."**

She also reflected on the consequences of kinship carers who face too big a hurdle in applying for a private legal order to formalise their kinship care arrangement.

"I think another risk is that if kinship carers have too difficult a task to apply for these orders, they just won't. But they are in a very precarious position without any legal responsibility. If their adult child comes knocking on the door to collect the child, the grandchild, they have to give the child over."

Nicola Jones-King shared similar insight from the frontline of private practice:

"Many kinship carers…never come to the attention of the local authority because they are simply getting on with it but struggle to secure legal orders because they do not have a mechanism to satisfy LASPO requirements and are on limited incomes so cannot afford to make applications to court."

The inquiry also heard of the emotional difficulties carers face in having to provide evidence opposing the child's parents, usually their own adult children, in court. Samantha Little told the inquiry that carers shouldn't be expected to have to do this on their own without legal representation:

"The other factor I think is really important to emphasise is, when a kinship carer applies to court, they have to make the case against their adult child. They have to tell the court why their adult child is not suitable to care for their family member, their grandchild for example. That's a really tough job to do… It's grossly unfair and it's very upsetting. Not least having to sit down and write it but also having to be in court to deliver it. I think we're all in agreement that it's just not a responsibility that any kinship carer should have to do."

63 Hunt. J (2020), *Key findings from the last two decades of UK research on kinship care.*

6.2.3 Negotiating support plans in private law matters

As set above, evidence givers identified securing suitable support packages, particularly financial support, as a common challenge in both private and public law contexts. They did however note specific difficulties within private law, particularly in respect of kinship carers needing legal support in negotiating special guardianship support plans during private law proceedings.

As highlighted in the example given below by Samantha Little, this process is often a negotiation balancing the carer's needs and the local authority's discretion and it requires the carer being sufficiently informed about their rights and options and what they can ask for, but also legal representation to be able to fight for the support they may need:

"I've acted for a number of kinship carers in private law cases where I've argued very hard for kinship carers to be given special arrangements for payments, for example, a foster care equivalent rate. But I've often asked and successfully asked in some situations for carers who were in their older years to be given a larger payment equivalent to a foster care payment, even though they're not deemed as local authority foster carers because they're going to need extra money that they're not able to supplement with their income."

6.3 Legal evidence in relation to public law

6.3.1 Availability of early stage legal advice

The inquiry heard how throughout the public law process, from the early stages when a local authority might be involved with a family to the formal pre-proceedings process, the legal support available to prospective kinship carers is limited.

At the earliest stages of local authority involvement with a child, legal advice can help a prospective kinship carer to understand what is happening and what options may be available to support the child and the family. The Association of Lawyers for Children told the inquiry that most prospective carers do not qualify for the legal help scheme under which legal aid is potentially available (see section 4.5.2). As explained, the financial situation of many kinship carers means that they cannot afford to pay for this crucial legal advice.

"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)."

6.3.2 Availability of legal support at the formal pre-proceedings stage

Even when the formal pre-proceedings process has begun and a prospective carer may be available to step forward to care for a child and therefore avoid the need for care proceedings to be initiated, the inquiry heard that advice is similarly limited.

Association of Lawyers for Children said:

"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."

6.3.3 Availability of legal support during care proceedings

A prospective carer who is made a party to care proceedings[64] may be eligible for legal aid at the proceedings stage. As with private law proceedings, the means and merits test is a significant hurdle for many to then get over. The means test prevents many carers from accessing support even when their financial situation is far from comfortable and practitioner evidence provided an insight into the prevalence of this issue.

Rosie Turner of Ridley & Hall, for example, described encountering many kinship care clients who are deemed by the legal aid agency to fail the means test because they have some limited savings but who in reality: **"are actually quite often relying on that money in order to support the children that have been placed in their care. That money has to last until the children reach adulthood, and sometimes beyond."** For other kinship carers, equity in their family home is a barrier to receiving legal aid but does not mean they have funds to pay a solicitor: **"Unfortunately, our kinship carers can't pay solicitors fees with bricks."**

In her oral evidence, Cris McCurley referred to the 2018 report of Professor Donald Hirsch at Loughborough University's Centre for Policy Research: 'Priced out of Justice? Means testing legal aid and making ends meet.'[65] Commissioned by the Law Society, the report sets out the findings of a comparison between the legal aid means test with research on what income is needed for a minimum acceptable standard of living in the UK.[66] The analysis finds that at the maximum level of disposable income at which legal aid is allowed, families would have too little income to even reach a minimum standard of living, let alone pay legal costs on top of that. For some households who are eligible, they can afford only half of the minimum budget required for a minimum standard of living and yet still have to pay a contribution to their legal costs. In short, someone needs to have far less money than what is required to have a minimum standard of living to qualify for legal aid in the UK.

Recent research by the Public Law Project has also highlighted the problem of 'trapped capital' leading to low income homeowners being prevented from accessing legal aid.[67]

Insights from the voluntary sector's specialist service on this topic are coming up in 6.4.8.

6.3.4 Local authority funding for legal advice and representation

In certain situations a local authority may provide some funding to a prospective kinship carer to enable them to obtain legal advice. However, it is evident from the responses from both kinship carers and the legal sector, presented here, that in reality this is extremely limited. The evidence received by the inquiry highlights: inconsistent approaches by local authorities; a lack of transparency on what is offered; limits on support which don't match the level of support needed; and provision often restricted to those carers who have been positive assessed which does not address the situation of prospective carers who for many reasons many not be backed by the local authority.

The Parliamentary Taskforce on Kinship Care conducted an analysis of local authority policies, acquired via a Freedom of Information request, on providing funding for legal advice and found little or no consistency between and sometimes even within local authorities.

The great majority of authorities who responded stated that they had a written policy or procedure about funding legal costs for kinship carers or potential carers. However, only four in ten had a policy or procedure that was public.

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64 A 'party' to court proceedings is a person or organisation who is subject to litigation. This means that they are centrally involved in the case. A witness is not a party, for example. Someone who is a party will be entitled to: receive copies of paperwork submitted during the proceedings, attend court to hear evidence, have questions put to witnesses on their behalf, hear the submissions made and then the judgment given.

65 Hirsch, D. (2018.) Priced out of justice? Means testing legal aid and making ends meet. Loughborough: Centre for Research in Social Policy, Loughborough University.

66 The Minimum Income Standard is based on research undertaken by Loughborough University and funded by the Joseph Rowntree Foundation. It looks at what households require at a minimum to meet key material needs and to participate in society. See: http://www.lboro.ac.uk/research/crsp/mis/

67 Public Law Project (2022), *'Trapped capital' and financial eligibility for legal aid*. See: https://publiclawproject.org.uk/resources/trapped-capital-still-barrier-to-legal-aid-research-shows/

- Of the policies, procedures and written replies sent in response to the FOI request, the Taskforce found:
  - 58% of local authorities provided no information as to how many hours of legal advice they would fund or what amount of costs.
  - Where authorities did specify how many hours of advice they would fund, this ranged from a few who said they would only pay for one hour of legal advice to two authorities who would pay for up to five hours of advice.
  - Where authorities specified a maximum amount they would fund, this ranged from £150 to £1,500.
- Most authorities' policies or procedures set restrictive criteria for which kinship carers or potential carers might be able to get help with funding for legal costs. Criteria generally focused on:
  - The child's existing legal status – typically, whether the child was in care or was subject to care proceedings or proceedings were being considered
  - Whether the (prospective) kinship carer had been positively assessed by the local authority
  - Whether the (prospective) kinship carer was applying or considering agreeing to the child being subject to a legal order which would mean the child ceased to be in care or did not enter care.

The findings of the Parliamentary Taskforce on this issue continued to be a pattern reflected in the evidence received by this inquiry. We heard again how local authorities will often fund a limited amount of legal advice during public law proceedings for prospective carers who have been positively assessed. However, such provision remains typically limited and often falls significantly short of what is needed. Further there is little clarity or consistency as to when and whether local authorities will offer to fund advice, court feels or representation to carers.

Resonating with previous research findings, contributors described common parameters associated with this local authority help with legal costs. These included the extent of this funding being **"...capped in a way which means that the work offered at the price proposed will be limited"** and **"The reality is that legal aid providers are doing a great deal of work pro bono"** (Association of Lawyers for Children, written submission).

Evidence givers reflected on the limits of this local authority provision:

"This doesn't even touch the sides in preparing kinship carers for the twists and turns that are a daily part of court life which we as practitioners are used to and we've learned to expect the unexpected. To the layperson, it can be traumatic and bewildering, especially when they're up against members of their own family and at a time when they may be coping with their own grief about loss of a family member as well." Cris McCurley, oral evidence session

"For lawyers like me, if you've been given, say, five hours of money to be able to help a kinship carer, by the time you've got your application sorted and a statement done, you're pretty much done. And I don't want to over emphasise the point, but I think it's important that lots of lawyers are just doing hours of pro bono here to help people. And again, that shouldn't be happening, because it means that lots of people aren't getting the help that they need." Samantha Little, oral evidence session

"The so called local authority "fixed fee" advice is so low that very few specialist solicitors will offer this advice. Generally the local authority will say that they will fund two hours at Legal Aid rates which equates to about £80 yet the work involved is extensive....Reading papers alone before even meeting the kinship carer will generally take more than three hours and if extensive negotiation with the local authority is needed on the financial package as well as the advice this can be a substantial piece of work." Nicola Jones-King, written evidence

"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." Helen McGrath, LLG, oral evidence

Collective experience from evidence givers was that local authority financial assistance to obtain legal advice (and in some instances representation) was conditional upon the local authority having positively assessed the prospective kinship carer, and supporting the prospective carer's position. This does not address those kinship carers who have legitimate challenge to bring or credible cases to present. As the ALC and The Law Society respectively put in their written evidence:

"..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." ALC, written evidence submission

"...this is subject to the position of individual local authorities in each case, and where local authorities do fund legal costs, this is typically limited to only one-two hours of legal advice, or kinship carers find that they have to be extremely persistent in obtaining local authority agreement to cover legal costs. There is no agreed national approach to local authorities paying for this advice and this will be subject to regional variations." The Law Society, written evidence submission

So what of those carers who are negatively assessed or who are otherwise not supported by the local authority or not offered assistance with legal costs?

In written evidence, The Law Society said: **"If the local authority does not support the placement, then the kinship carer who has been negatively assessed is unlikely to be able to access free legal advice to challenge what could be an inadequate assessment. Ultimately, if all options of family and friends care are not properly explored, a child could end up in the care system or even adopted."**

Whilst local authorities may fund some level of legal advice where a carer is positively assessed and placement of the child in their care/the child remaining in their care is supported by the local authority, it is evident from the evidence presented here that this is not a substitute for a clear and effective public funding regime and the need or equality of arms within care proceedings.

6.3.5 Importance of early advice in public law

The inquiry heard from both kinship carers and practitioners working in the sector about the importance of carers and prospective carers being able to access early advice, ideally before a local authority have applied to bring care proceedings. If care proceedings are ongoing, then advice should be offered as soon as those prospective kinship carers are being considered as possible alternative carers.

The inquiry heard from organisations and practitioners that if kinship carers were clearly informed from the outset they would have a better understanding of the situation facing the family including the severity of the concerns and be able to make a more informed decision whether to step forward to offer to care for the child. They would also be able to help identify any potential issues so they can be addressed early on, and to have a better idea of the support they might be able to ask for.

Kinship carers who contributed oral evidence were in agreement that the earlier the better matters when it comes to provision of legal advice and support. Shanayd, a special guardian to her niece, told parliamentarians: "It would have helped having that support early on. I had no idea about what social work processes were. It was all new for me. And understanding what the implications of the order were for the future. So from the beginning but also throughout the process because things often come up."

In their written evidence, The Law Society said:

"The earlier a kinship carer / prospective special guardian can have legal advice the better. They are often having to grapple with the possibility of a child living with them permanently with all of the repercussions that brings, and good early legal advice is crucial as it can help to resolve issues and make plans for children clearer. It can ensure that the appropriate support plan is in place."

Association of Lawyers for Children said:

"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…"

Nicola Jones-King of Taylor Rose HW also stressed the importance of pro-actively working with families earlier, avoiding situations where prospective kinship carers emerge late in proceedings. Facilitating this requires families to have the advice they need to participate on equal terms and understand the options they have. In relation to extending early legal advice to kinship carers, Nicola said:

"…what it would proactively do is get kinship carers involved earlier and more fully, so reducing delay and allowing testing out of kinship options much earlier. Too often it unfolds at final hearing with an unrepresented desperate and worried relative unrepresented in the face of a care plan for adoption, something which these proposals would make a thing of the past."

6.3.6 Assessments

At the formal pre proceedings stage, local authorities should be exploring kinship care options. This includes identifying and assessing prospective carers.

The inquiry heard how a lack of information and understanding can be a reason that otherwise suitable prospective kinship carers receive a negative assessment by the local authority. The process can be overwhelming for an uninformed and unsupported carer who may then drop out of the process. It can also be the reason some relatives or friends do not come forward as a potential option at this early stage if they do not realise the severity of the situation.

Association of Lawyers for Children argued prospective carers being sufficiently informed at the assessment stage is important to ensure they stand the best and fairest chance of a positive assessment to enable them to be recommended as a kinship carer.

"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."

Assessments can be lengthy processes, usually involving an initial assessment and then for positively assessed carers, a more rigorous process involving various checks including DBS checks follows. In their written evidence, the Law Society, said: **"The importance of such assessments being carried out prior to proceedings being commenced with those being assessed having proper legal advice cannot be underestimated and is of course best practice."**

Crucially, assessments can have huge long term consequences, particularly if they result in kinship care being ruled out and the child being removed from their family network and living with strangers in the care system. Association of Lawyers for Children said: **"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."**

As mentioned above, carers who have received a negative assessment by a local authority will usually then not be funded by the local authority to receive legal advice. The Law Society told the inquiry: **"Ultimately, if all options of family and friends care are not properly explored, a child could end up in the care system or even adopted."**

The Parliamentary Taskforce on Kinship Care heard examples of shortcomings in the assessment process.[68] For example, some kinship carers described not receiving any notice from the social worker before they received an assessment call. Some described being called by the social worker, only to find out later that the conversation was deemed an initial assessment. Others said the assessment had taken place very soon after a crisis, such as the death of the child's parent (who may have been the potential carer's own son or daughter), when they had not had time to process what had occurred. Others felt negatively judged and that they were made to feel responsible for the parents' actions or addictions.

Prospective carers who wanted advice on how to challenge a negative assessment is also a theme referred to in the analysis of calls to Family Rights Group's advice service (Section 6.4.5)

Association of Lawyers for children told the inquiry that many carers could successfully challenge a negative assessment if they were in receipt of legal advice. Cris McCurley also said: "**it has to be said local authorities don't always get these calls right. In many cases, the court may disagree with a negative assessment."**

6.3.7 Early intervention to avert children becoming looked after

A particularly strong message that came through in both written and oral evidence is that the lack of early advice and support for working with families can lead to more intrusive and costlier interventions further down the line.

Lawyers in Local Government stated in their written submission: **"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."**

Cris McCurley highlighted the substantial financial costs to the state of children becoming or remaining looked-after. She cited National Audit Office figures[69] from 2014 which estimate that to keep a child in foster care for a year, the cost is approximately £29,000 to £33,000. If a child is placed in a residential home, the cost is estimated between £131,000 and 133,000.

More recent estimates by others also highlight the substantial sums the state spends on children's social care.

- The Parliamentary Taskforce on Kinship Care[70] estimated that for every child placed in a residential local authority placement, there is an average cost to the state of £181,293 per child. For every child in a foster care placement, there is an average cost of £33,623 per child. This did not include the costs associated with care proceedings, or subsequent events once the child is looked after, such as reviews and placement changes.
- The Independent Review of Children's Social Care in England have also commissioned economic analysis[71] which estimated the social costs of children being looked after to be £72,500 per child per year on average and £11,900 per year over their lifetime. They also estimate that a staggering £1.2 billion was spent in 2019/20 on the legal costs of bringing children into the care system.

6.3.8 Navigating court proceedings

Prospective kinship carers are often not a party to court proceedings, even when the local authority has positively assessed them and is putting them forward as kinship carers for the child.

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68 Parliamentary Taskforce on Kinship Care (2020), 'First Thought Not Afterthought' Report, p.52. See: ***https://frg.org.uk/policy-and-campaigns/the-cross-party-parliamentary-taskforce-on-kinship-care/***

69 National Audit Office (2014), Children in care. See: https://www.nao.org.uk/report/children-in-care/

70 Parliamentary Taskforce on Kinship Care (2020), 'First Thought Not Afterthought' Report, p.75.

71 Independent Review of Children's Social Care in England (2021), ***Paying the Price: The social and financial costs of children's social care***. See: https://childrenssocialcare.independent-review.uk/wp-content/uploads/2021/11/Paying-the-Price.pdf

Many of the kinship carers who responded to the Family Rights Group survey indicated they were not party to proceedings and as a result often had a limited understanding of what was going on in the proceedings or what the assessments of the parents or child had said or recommended. Many did not understand that in the context of care proceedings, they might be entitled to apply for disclosure of key documents, or to apply to become a party to proceedings.

Even if granted party status, many kinship carers did not have legal representation and so their ability to participate effectively was severely limited. Almost a third of survey respondents had to self-represent at least some of the time during court proceedings. As mentioned for private law proceedings, the emotional difficulties of participating in court proceedings and having to speak against their adult children or other relatives or friends must also be recognised.

The inquiry heard from the legal community that the impact on kinship carers of not being a party to proceedings is that they become periphery to those proceedings, cannot follow what is happening and what is being agreed, despite their involvement in the child's life as their prospective carer.

"Even for family members positively assessed as kinship cares 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…this makes it difficult for them to know what is going on or to receive information." Lawyers in Local Government, written evidence

"It is evident when we are representing those who are legally aided within public law proceedings that the family member being assessed as a kinship carer is left on the periphery of the proceedings. Their voices rarely directly heard by the Court and if they do obtain legal advice it is often limited and last minute." Nicola Jones-King, written evidence

Failure to properly involve (prospective carers) also has implications for whether care proceedings are commenced and where they are, the progress of the proceedings. Difficulties can variously flow from carers not having been engaged during the formal pre-proceedings stage (or earlier) or carers not having legal advice when court proceedings are being contemplated. There can similarly be implications for proceedings where carers who could (and would satisfy the test for being) joined as parties to proceeding are not aware that they can pursue this. For example, late engagement with the family and friends network may lead to the unnecessary issuing of care proceedings; prospective carers emerging late in proceedings and the need to adjourn final hearings. Rushed or inadequate assessments and the need for those to be challenged may also result. Decisions made at final hearings may be successfully challenged on the basis of failure to explore a realistic option for the child and may lead to further proceedings being required. **"All of these outcomes have impact on the court's capacity to hear cases promptly and within the 26-week time limit."** (ALC, written evidence)

Nicola Jones-King told the inquiry that kinship carers receiving legal advice and having their voices heard directly in care proceedings could help to speed up the process and ensure the best outcome for the child in the longer term: **"There are many cases where issues resolution or early final hearings are adjourned because it becomes apparent that proposed kinship carer has not had adequate advice on what a special guardianship order is or on what the package of support does and does not cover and as to its limitations."**

This is especially given the current pressures in the family justice system, following the Covid-19 pandemic. The average time to complete care proceedings throughout 2021 was 45 weeks, up 6 weeks from 2020 and well above the 26 week limit set out in legislation[72]. Only 23% of cases were disposed of within 26 weeks, down 8 percentage points compared to 2020.

72 MoJ (2022), *Family Court Statistics Quarterly: October to December 2021*

6.4 Evidence from Family Rights Group's advice service

The inquiry heard about the specialist advice provided to kinship carers and prospective carers by the charity, Family Right Group

6.4.1 The advice service

Family Rights Group runs a free, confidential advice service in England that comprises:

- A free telephone/ textphone advice line open Monday to Friday between 9.30am and 3pm.
- Easy-to-follow, online advice. Features include an A-Z, FAQs, films, 'top tips' and legal advice sheets.
- Online forums for parents and for kinship carers where they can receive advice, discuss concerns, and find support.

The service helps families to understand the law, child welfare processes, their rights and options and to better understand social work concerns. The service has a unique approach, combining both legal and social work practice knowledge. It is staffed by expert advisers who are all experienced lawyers, social workers or family rights advocates.

In 2021/2, around 70% of callers to the advice service were mothers or fathers involved with children's social care services. The remaining 30% of callers were wider family members or friends, the overwhelming majority of whom were kinship carers or prospective kinship carers.

The service forms an essential part of the Family Rights Group's work to help families to have their voice heard, be treated fairly, and get help early to prevent problems escalating.

The advice service is part-funded through a contract with the Department for Education that has been extended to 30 September 2023.

6.4.2 Demand for the advice service and profile of callers to the advice line

Between 1 April 2021 to 31 March 2022, Family Rights Group's advice line answered 7144 calls. Advice service funding from the Department for Education increased between 2019/20 and 2021/22, however, there are still significant funding constraints. This combined with significant demand means the service was only able to answer four in ten calls to the advice line in 2021/22.

There were over 580,000 unique visitors to Family Rights Group's website and other online platforms in the year ending 31 March 2022. This included more than 45,000 unique visitors to the kinship care advice forum

The Kinships Carers' information page on the website **https://frg.org.uk/get-help-and-advice/who/kinship-carers/** was one of the top 5 most-visited pages.

Analysis of calls in 2021/2 from wider family and friends, including those who were, or were considering becoming, kinship carers found that grandparents formed the majority of these callers, followed by aunts and then family friends. Of those that disclosed their household annual income, 36% reported a household income of under £15,000 per annum and a further 23% reported that their household income was between £15000 and £25,000 per annum.

6.4.3 Reasons why wider family and friends contact the advice service

Common issues raised by wider family and friends are the need for information and advice on:

- How they can step in early and take on the care of a child, or be assessed to take on the care of a child (whether temporarily or permanently), when concerns first emerge
- The need for prospective kinship carers to understand different possible kinship arrangements and related implications for entitlement to support, who can make decisions about the child and the nature of state intervention in the child and carers' lives

- How to engage with ongoing private and public law court proceedings in relation to the child or apply to the Family Court for a legal order
- How kinship carers can secure adequate support for the child or children in their care.

Wider family and friends calling the advice service identified the underlying concerns as to why the child may be in need of support, at risk or unable to remain with their parents. The most common factors identified were:

- 19% domestic abuse
- 16% parental mental ill-health
- 12% parental drug misuse
- 8% parental alcohol misuse
- 6% death of a parent
- 6% non-accidental injury of a child.

6.4.4 Advice in response to initial concerns

The advice line frequently receives calls from family and friends who are concerned about a child's safety and wellbeing at home and want to know how they can help. Some callers are seeking advice about raising their concerns with children's services, others may be calling about a child already known to children's services. 12% are calling about child protection concerns or a child with a child protection plan.

Many relatives and friends contacting the advice service may wish to support the parents to safely raise the child. They are also considering whether, the child could live with them, whether on a temporary basis or for the long-term, as kinship carers. This can be a very difficult situation for relatives and friends to be in. They may need to manage complex family dynamics and navigate unfamiliar children's services procedures and processes, in order to try to help a child. Family Rights Group's advisers discuss the situation in detail and assist these callers to understand their options and related next steps, including practical advice about approaches the caller can take.

The majority of callers are unfamiliar with family group conferences (FGCs). Advisers are able to explain the process to the caller, how to request for this to be arranged, and how it can be used to help the family arrange valuable support and consider alternative carers in the family if the child cannot remain at home.

"Knowing what rights you do have helps when it comes to sorting out how you can go about taking on the care your family member and what rights you can really press for."
Kinship carer, digital survey respondent, 2021

"The advice line enabled me to prevent my twin granddaughters from being placed in the care system and also I was helped with understanding what it means to be a kinship carer."
Kinship carer, digital survey respondent, 2021

6.4.5 Advice in relation to initial and full assessments

If the local authority believe that concerns about the child are not sufficiently addressed, they may consider initiating care proceedings. It is at this pre-proceedings stage or at the beginning of court proceedings, that children's services will most commonly explore alternative carers for the child.

Family Rights Group's advice service frequently provides prospective and current kinship carers with advice regarding assessments. Whether needing advice about initial assessments or in relation to full assessments, advisers are able to explore with the prospective carer what is reasonable for them to be able to expect from the assessment process and those conducting an assessment. Carers receive advice about what will likely be required of them and what they can request. Calls to the service reflect the differing approaches and templates that children's services departments across the country adopt and the absence of national minimum standards for initial assessment work. The information and advice carers require is crucial in assisting (prospective) carers to make informed decisions about whether or not to be assessed, to prepare for the assessment and understand the assessment process and possible outcomes.

Prospective carers whose assessments have a negative conclusion also seek advice from the service, often unsure about how to raise queries or challenge assessments which they believe contain errors or do not consider information fully or in context. Family Rights Group's advisers provide advice about the ways in which a negative assessment may be challenged. They provide tools to assist the prospective carer in advocating for themselves and the child, including template letters to accessible step by step guides.

Case study

A grandmother put herself forward to care for her two grandchildren in September 2020. At the time they were in the care of their father who was struggling. The children have a close relationship with their grandparents and frequently spent time with them. Children's services were involved and wanted to assess them as potential kinship foster carers. An assessment was undertaken but the grandparents never received an assessment report. During the assessment the grandparents made clear that they were willing to take on the care of the children but declined becoming foster carers as they did not understand why that would be necessary. In March 2022, some 22 months later, they were informed by the children's father that the local authority had initiated care proceedings and the children had been placed with an unrelated foster carer. The social worker subsequently provided the assessment report to the grandparents. The assessment was negative on the basis that the grandparent did not wish to be considered as foster carers though were capable of caring for the children.

On receiving advice from Family Rights Group's service about the assessment process and options for caring for the children, the grandmother was clear that she would have been happy to be assessed as a foster carer had this been explained to her. Had she received adequate advice and assistance at the beginning of the process, the children may not have been removed from their loving family. Costly and fractious court proceedings could have been avoided. With the assistance received from the service, the grandmother is in a position to seek a properly conducted assessment and advocate for the children to be placed in their care.

6.4.6 Kinship foster carer (section 20 voluntary arrangement) vs private arrangements

"The Family Rights Group adviser was extremely helpful in providing me with verbal and written advice as children's services wrongly claimed I had a family agreement with the mother (who was not able care for the children)."
Kinship carer, digital survey respondent, 2021

Sometimes a child becomes looked after by children's services but the child will live with a relative or friend who becomes their foster carer. The carer is known as a kinship foster carer. Children's services have the same range of duties to children raised in kinship foster care as they do to other looked after children. This includes the carer receiving a fostering allowance.

Some kinship foster care arrangements arise when the Family Court approves that plan for the child and makes a care order under section 31 of the Children Act 1989. Kinship foster care may also come about through a voluntary arrangement under section 20 of the Children Act 1989 (and in Wales section 76 of the Social Services and Wellbeing (Wales) Act 2014. The Family Court does not have to be involved for a voluntary arrangement to be put in place. Sometimes these arrangements are planned and follow an agreement between children's services and parents (or others) with parental responsibility for the child. But voluntary arrangements may come about in emergency situations sometimes with parental agreement but also where a child has been abandoned or where there is no one able or willing to exercise their parental responsibility to provide or arrange for somewhere for the child to live. This could be where a parent is unwell, in prison or cannot be contacted for example.

Whatever the precise situation, if children's services play a major role in making the arrangements for the child to be cared for by a family member or friend – whether intended as a temporary or longer-term arrangement – the most likely conclusion is that children's services is exercising its powers and duties to look after the child under section 20(1)(c) of the Children Act 1989. That means the carer will be a kinship

foster carer. If children's services are instead simply assisting in arranging informal care (a private family arrangement or a private fostering arrangement) then they must be explicit with those involved about that.[73] This includes giving clear information about who will be financially responsible for the child. Only if in receipt of such information can a potential kinship foster carer give informed consent to accept the child on the basis of a private arrangement instead.

7% of calls to Family Right's Groups advice service from wider family and friends are about voluntary arrangements. Most commonly the service receives enquiries from kinship carers who have had a child placed with them by the social worker, but the local authority's position is that it is a private arrangement and they are not entitled to fostering allowance or support. The advisers are able to provide robust advice, including detailed template letters setting out the law, statutory guidance, and relevant decisions and reports from the Local Government and Social Care Ombudsman, to kinship carers seeking help in this situation.

"Niece and nephew came to stay under 'private arrangement' not private arrangement at all and the call helped loads and I got a template [letter to challenge it]. The social services then did agree to pay me within 24 hours (after 6 week of struggles financially!) So it helped loads"
Aunt caller to the advice line

6.4.7 Type of arrangement and the need for tailored advice

Whether a placement is considered to be kinship foster care under a voluntary arrangement or a private arrangement (e.g. private family arrangement or private fostering arrangement) is just one example of the ramifications a type of kinship arrangement has on the carer and child.

The type of arrangement has implications as to the child and carer's entitlement to support, as well as the carer's ability to make decisions regarding the child's care and the level of state intervention in the lives of the carer and child. Family Rights Group's advice and advocacy service frequently advises prospective carers about the types of kinship arrangements and the difference between them. The evidence submitted by the service resonated strongly with evidence from legal contributors to the inquiry in underscoring how too often (prospective) kinship carers have to navigate a complex decision-making process with limited advice and assistance. That many will be doing so having taken on raising the child/children in an emergency and without preparation was highlighted as making the challenge all the greater. Family Rights Group indicated how in this context, timely and very tailored advice from those with specialist knowledge of kinship care was needed:

"The type of arrangement may have lasting implications for all involved and therefore it is incredibly important to get the decision right. …Each family situation is unique and it is not straightforward which arrangement will be most appropriate. Carers and prospective carers need careful and tailored advice. We provide them with the opportunity for a detailed discussion about their needs, the children's needs, and the background circumstances. It is this that helps the prospective carer to be in a position to decide which arrangement and legal route is most suitable for them and the child."

6.4.8 Advice in relation to care proceedings

Approximately 45% of calls in 2021/22 to Family Rights Group's advice line were from kinship carers or prospective carers concerning a child who was either looked after in the care system or subject of care proceedings.

Some of the kinship carers contacting the advice line are those who have recently taken on children who are the subject of ongoing care proceedings. The evidence received from the service highlighted the importance of holding in mind that those are proceedings in which decisions are being made about the children's care. Often, though the carers will have discussions with the children's social worker, the carer is not themselves part of the court process. Yet within the proceedings the court makes decisions which may impact the kinship carer's ability to care for the child, including what contact arrangements with parents

73 *For more information about kinship foster care vs private arrangements see: https://frg.org.uk/get-help-and-advice/who/kinship-carers/kinship-foster-care/#private-arrangement-vs-kinship-foster-care:-disputes-with-children%E2%80%99s-services*

or other family members and what support plan is put in place. Moreover, court papers will include information about the child, such as medical information or psychological assessments which may not have been shared with the carer. The advice that carers seek from the service is then often about how to ensure their views are properly made known within the proceedings, how they can properly influence (e.g. court timetabling and crucial interim decisions which will impact their lives and the child's) and understand the court process when they are not parties to the case.

Evidence from the advice service further mirrored concerns expressed by kinship carers and legal practitioners giving evidence to the inquiry - even when kinship carers are formally made a party to the proceedings, the legal aid regime operates in a way which leaves many carers having to pay privately for legal advice and representation. For many others they simply have to represent themselves.

The service also provided insights about the perverse outcomes that kinship carers and child may face where arrangements are formalised with private law orders at the outset of care proceedings:

"A number of kinship foster carers have recently contacted Family Rights Group's telephone advice line shortly after care proceedings have commenced. They have been caring for children under a voluntary arrangement under section 20 of the Children Act 1989 before care proceedings started. At the first court hearing a child arrangements order was made stating that the child lives with them. This gives the carer parental responsibility for the child which they would not have had previously. This also means that the carer is then entitled to non-means non-merits legal aid for representation in the care proceedings. But when the child arrangements order is made and the kinship carer ceases to be a foster carer, they may lose their fostering allowance and other support that was in place when the child was a 'looked after child'. Kinship carers can object to the making of the child arrangements order but regardless of what they decide to ask the Family Court to do, they are faced with choosing between having to navigate complex court proceedings without representation (or paying from their savings or going in to debt) or losing key support…It's an invidious position to be in."

6.4.9 Advice in relation to private law orders

Approximately 13% of wider family and friends contacting Family Rights Group's advice service, are asking for advice about private law orders. In the main they are seeking advice because they have been told by children's services to apply for a court order to secure the child's future with them. This may be despite children's services having significant concerns for the children's safety were they to return to their parents' care. A number of callers have told advisers that they have had to fund the court proceedings themselves. For the many kinship carers having to pursue applications without legal representation, the service's detailed information about the court process and about the law is vitally important. The service notes that in particular their comprehensive written DIY guide to making Special Guardianship Order applications in private law proceedings is heavily drawn upon. Kinship carers may also contact the service when the children's parents have made an application to court for contact with the children or threatened to take them to court to discharge the court order.

6.4.10 Support for kinship carers

Approximately 21% of calls to the advice line from kinship carers are primarily about accessing support. Analysis of these calls reflects that in some cases the lack of support, especially where the child may have complex needs, is putting such stress on the carer that they fear it could lead to the placement breaking down.

Case study material shared with the inquiry by the service reflects how incredibly complex it is for kinship carers to understand the support they are entitled to receive. They also highlight that entitlement frequently changes as the situation or kinship arrangement changes. This means that the support for one kinship carer may be drastically different from another even when it appears that there are only minor differences in their situation:

Case study:

Ms A and Ms B are both grandmothers looking after their two grandchildren. In both cases the children's parents are unable to care for them due to substance misuse issues and mental health difficulties.

Ms A's grandchildren came to live with her by agreement between her and the children's parents without children's services being involved.

Ms B's grandchildren were placed with her by the social worker under a voluntary arrangement under section 20 of the Children Act 1989. This meant they are looked after children owed duties by children's services. It meant that Ms B was a kinship foster carer for them. This was following a meeting where it was agreed by the children's parents that the children should be placed with Ms B.

In both cases children's services applied to the Family Court to commence care proceedings and recommended that the children should remain living with their grandmother in the long term under a special guardianship order. The arrangements for the children have stayed the same during the proceedings.

Because Ms A's grandchildren were not in care immediately before the making of the special guardianship order, she and her grandchildren are not entitled to be assessed for special guardianship support services. They can request this but it is up to children's services whether they carry out this assessment or not. Even if they do carry out such an assessment it is entirely discretionary as to whether the local authority offers a support package of practical or financial assistance. Ms A is not entitled to apply for support from the Adoption Support Fund.

Because Ms B's grandchildren were looked after in the care system immediately before the making of the special guardianship order, there is a legal duty on children's services to assess the need for support services including financial help. Ms B is also entitled to apply to the Adoption Support Fund to assist with therapeutic support for her grandchildren.

The evidence received also makes clear that even if support is offered and agreed when the children are first placed with a kinship carer, circumstances often change over time. This includes when support packages provided by children's services are regularly reviewed and discretionary support may be maintained, withdrawn or reduced for example. Additionally, the children's needs can change over time. The need for information and advice is not therefore limited to one or two points in time. Rather specialist advice may be required at a number of critical stages and at regular intervals. This includes advice informed by knowledge of the regime for practical and financial support pertaining to different types of kinship care arrangement.

6.4.11 The impact of the advice service

Family Rights Group worked with New Philanthropy Capital (NPC) in 2015 to establish a framework that would enable the charity to regularly conduct impact evaluations of the advice service, including measuring economic outcomes. This was used for a 2020 evaluation of a sample of advice line callers which found that:

Immediately after the call to Family Rights Group's advice line:

83% of respondents felt that they understood the law better as a result of the call;

85% felt that they understood their rights and responsibilities better as a result of the call;

62% felt that the call with Family Rights Group helped them to understand the concerns of the social worker;

81% felt that the call improved their understanding of children's services procedures.

Four to six months following the call to the advice line:

- 67% felt they had a better understanding of children's services procedures;
- 45% felt better able to work with the social worker/children's services;
- 40% agreed that the support they received from us made a positive difference to the local authority plan and/or services for their child/children.

Cost effectiveness:

New Philanthropy Capital also constructed an economic model to estimate the public savings of the advice line from care costs avoided and local authority costs saved by averting the need for long term or more intensive statutory involvement. The findings suggest that the service saves an average of £15.10 for every £1 invested.

Findings from an online survey carried out in 2021 amongst visitors to Family Rights Group's digital advice service found that:

- 72% of respondents agreed or strongly agreed that they had a better understanding of children's services procedures as a result of using the digital service,
- 72% of respondents agreed or strongly agreed that they felt they understood the law better as a result of using Family Rights Group's online advice service.
- 69% of respondents also agreed or strongly agreed that they felt they understood their rights and responsibilities better as a result of using Family Rights Group's online advice service.
- 61.5% of respondents agreed or strongly agreed that they felt more confident to have their say with social workers/children's services as a result of the information provided by the digital advice service.
- Almost one in two respondents (49%) agreed that as a result of the digital advice service, they better understood the concerns of the social worker.
- The majority of users (58.5%) agreed or strongly agreed that visiting FRG's digital services had improved their ability to cope.

6.5 Proposed solutions

"It's not a disputable argument to say that children have the right to grow up in their families of origin wherever possible, and kinship carers are heroes who turn their lives upside down to take on children, perhaps long after they've raised their own children, perhaps after they've retired, and they've started to look forward to some time and money to themselves. It makes both moral and financial sense, given the cost of the alternatives, for non-means tested legal aid to be available in these cases. This is a critical issue, which would not be budget busting. And which would do so much to protect children and keep them out of the care system, which I think we could all agree is not the best place for children to be raised and to grow up."
Cris McCurley on behalf of the Law Society

In this section we analyse the solutions proposed by evidence givers in both oral and written evidence received by the inquiry. All comments relate to a central proposition that kinship carers need legal advice and representation to be able to make informed decisions and secure the support they need to raise their child relatives, averting the need for those children to be raised by strangers in the care system. Evidence givers thought this needed to be available from an early stage and throughout proceedings so that carers are not left on the side-lines in decisions made about their kinship children. The merits of government funded accessible telephone and digital specialist advice were emphasised. In addition, it was strongly expressed that the scope of legal aid for advice and representation should be extended and should be non-means tested, and only merits tested where in relation to challenging negative assessments.

The evidence includes a briefing note for the Ministry of Justice on proposed changes to Family Legal Aid in respect of special guardianship, which has been jointly prepared by Family Rights Group, Association of Lawyers for Children, The Law Society and Resolution. The paper proposes changes in respect of private family law and also highlights "the importance of reflecting these changes in public family law, to ensure family members and friends who put themselves forward in the context of care proceedings to consider taking on the long-term care of a child under a special guardianship order are not left without legal advice and representation."

The paper can be read in full here. The proposals include:

Private Law:

- non-means tested legal help advice for potential or actual kinship carers who are considering making an application for a special guardianship order in relation to a child.
- Following a positive special guardianship assessment by children's services, the potential special guardian should be entitled to non-means and non-merits tested legal aid in order to apply and be represented in proceedings.
- Where the special guardianship assessment is negative, that non-means but merits test legal aid should be available to the proposed special guardian to apply and be represented in proceedings.

Public Law:

- Following a prospective kinship care having a positive initial/viability family and friends care assessment by children's services: non-means and non-merits tested legal help advice should be available for initial advice for the proposed special guardian to support them through the full assessment process.
- Where the initial assessment is negative, non-means BUT merits tested legal aid should be available to support a carer to challenge an inadequate assessment.
- Following a positive full special guardianship assessment children's services, the potential special guardian: Should be entitled to non-means and non-merits tested legal aid in order to be joined to care proceedings either as an intervener or as a full party to proceedings.

There was agreement at our oral evidence session with practitioners that the Ministry of Justice's commitment to extend legal aid to prospective special guardians in private law was a welcome step, but that the impact would be limited unless such support was non-means tested given the financial predicament facing carers.

In respect of the Ministry of Justice's proposals, published in March 2022, as part of the Legal Aid Means Test Review, it was contested that such changes would not remove the barrier to many kinship carers being able to access legal aid because of housing equity and other financial resources being drawn upon to raise the children. In their written evidence, ALC said: **"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."**

Lawyers in Local Government also proposed that kinship carers who have been assessed as being appropriate should be able to access public funding for legal costs without means testing:

"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."

The inquiry heard how the extension of early legal advice to prospective kinship carers, through the Legal Help scheme, would assist families to get access to the early advice they need. Engaging relatives and exploring kinship care options early could prevent problems and delays emerging further down the line and increase the chances of a successful kinship care arrangement.

Reinforcing the proposal made in the joint paper, Nicola Jones-King recommended the extension of Initial Legal Help to all kinship carers on a non-means and non-merits assessed basis. **"...if initial advice and assistance was available to them under Legal Help this would allow kinship carers to get the answers to the questions. The significance of allowing early advice so individuals know their rights and the orders available could assist with reducing the need in some situations for Local Authorities to even apply to the Court for public law orders. It could reduce delay within care proceedings as a major factor in delay is late kinship carers coming forward or late challenges to negative kinship assessments..."**

Rosie Turner also argued for early advice and for more support for positively assessed kinship carers towards the costs of legal aid and representation: **"We have too many kinship carers without adequate support and who are contacting us after the orders being made. The reality is that they need specialist advice long before a final order is made. Local authorities need to be paying the legal costs of advice and representation and the court fees of kinship carers in all cases where the local authority supports the placement."**

Family Rights Group emphasised the importance of adequate government funding for accessible telephone and digital specialist advice for kinship carers and prospective kinship carers, arguing that such services have a crucial role to play at different junctures including at the early stages of state involvement with children and families : **"Free specialist and independent advice and information for relatives and friends of the child is crucial to ensure that families can effectively engage in decisions about the child. Our service provides detailed advice, including template letters, to help kinship carers understand their rights and advocate for the child to gets any help they are legally entitled to, know what discretionary support they can ask for and how decisions can be appropriately challenged. It's of benefit to the public purse too through costs avoided, but without adequate funding we can't answer every call."**

As set out in Chapter 4, there is no single definition of kinship care, resulting in different interpretations of kinship care being used in different areas of national and local government policymaking. Family Rights Group have published a proposal called 'Time to Define' for a clear and simple legal framework for kinship care.[74] They propose a single definition of kinship care be written into primary legislation which would encompass the different types of kinship care arrangement. Meeting the definition would then automatically passport kinship carers and their children to entitlement to a minimum level of support and services. The proposal seeks to address the misunderstanding and lack of recognition surrounding kinship care and the different types of arrangement it can take, and ensure that the needs of all kinship children are met. The inquiry heard that this simple legal framework would ensure kinship care in all its forms is firstly recognised and secondly that could follow through in government policy on funding of specialist voluntary sector advice and on legal aid to make sufficient provision for the range of situations in which (prospective) kinship carers need legal advice and representation and the scope of the advice needed.

Samantha Little mooted the idea that if parental responsibility could be shared with kinship carers by agreement, then some carers could avoid the need to apply for a private law order. This would be relevant in respect of informal kinship care arrangements where the child's parents, or those with parental responsibility, have consented to the arrangement. It would help address difficulties carers without parental responsibility face when they are not permitted to make decisions about the child they are caring for, such as accessing medical treatment, which were articulated by Clare in her oral evidence. In isolation, it would not address the difficulties in accessing support, but we believe this proposal merits further consideration and would suggest that the government explore how such an option could work in practice. There would, for instance, be a case for providing parents and prospective carers with legal advice before agreeing to such an arrangement.

74 Family Rights Group (2022), Time To Define Kinship Care. See: https://frg.org.uk/news-blogs-and-vlogs/news/time-to-define-kinship-care/

Conclusion and recommendations

"Kinship carers are heroes who turn their lives upside down to take on children"

Cris McCurley, oral evidence on behalf of The Law Society

We agree with Cris. Kinship carers are an amazing group of people who demonstrate the importance of supporting family and friends as an important resource to children. They step up, often with little notice or time to consider options or what support they might need, to give children a safe and loving home within their existing family and friend networks, averting the need for those children to live with strangers in the care system or potentially be adopted. In doing so they provide a supportive and often familiar environment for the kin children they are raising and save the state a substantial cost.

The evidence our inquiry has received portrays a child welfare and family justice system that does not sufficiently support those relatives and friends to make informed decisions about children they are stepping forward to provide a loving home for. A system that does not ensure carers have access to the legal advice and representation they need to secure an appropriate legal arrangement and the support provision that would allow the child to thrive throughout their life. In some cases, the system appears to actively discourage this, making the process confusing, stressful and sometimes impossible for kinship carers. This is undermining of the principle of the state working in partnership with children and their families and of the principle of co- production. Further, it frustrates the explicit duties on local authorities, set out in primary legislation, which reflect that children are best brought up within their families unless compulsory intervention is necessary.

Kinship carers told us that the availability of legal advice and representation is crucial to their being able to understand their rights and options. Yet the vast majority did not feel they had been given enough information to make those decisions. There was widespread variation in what legal advice and representation was available to kinship carers, depending on the rules of the Legal Aid Agency or what local authorities were prepared to offer, and the extent to which the state expected kinship carers to meet legal costs from their own resources. Many had to spend significant proportions of their own finances to secure legal advice and representation. For others it was simply unaffordable and they have found themselves side-lined in the important decisions about the children they have stepped forward to raise. Others described feeling too scared to voice concerns or challenge the local authority in case this resulted in their commitment to the child being questioned and/or them receiving a negative assessment.

Practitioners detailed how in both public and private law, kinship carers face significant challenges in accessing legal advice and representation. Some of these arise from the parameters of the legal aid regime itself, including the means test and its low capital and income thresholds. Others result from practical barriers, such as kinship carers not being made a party to care proceedings or the availability of solicitors willing and able to take on their case because of the limited funding available.

Evidence givers stressed the importance of kinship carers and prospective carers being able to access legal advice from an early stage and throughout the process. They spoke of being left in the dark, with limited information about the child's case and what the safeguarding concerns are. Of not having seen key files about the child, which would have alerted them to the child's specific health, emotional and educational needs or traumatic circumstances. They reported having no clear understanding of assessment processes or what was being asked of them 'or what they should be able to expect of the children's services and court'. They highlighted how carers often struggle to gain adequate understanding of specific types of kinship care arrangement and their implications for practical and financial support. They also highlighted a lack of legal advice for kinship carers regarding support plans and packages and the significant consequences of this for them and children.

The inquiry heard about the merits of voluntary sector accessible telephone and digital specialist advice, including that provided by Family Rights Group and funded by the government. Family Rights Group's advice service has a crucial role to play for families along the child welfare continuum, but specifically at the early stages of state involvement with children and families. In supporting prospective carers to understand their rights and options and to effectively participate in decision making, it leads to children being able to live safely with loving family members and savings for the taxpayer from the costlier interventions avoided. Yet the inquiry also heard the service is operating at full capacity and therefore cannot help every family who needs it.

Both kinship carers and the legal sector highlighted the inadequacies of the funding provided by local authorities for legal advice and representation. Such funding may be provided where a kinship carer's case aligned with that of the local authority. Sums are normally so limited that solicitors find themselves limited in the work they can undertake, some topping up advice on a pro bono basis in a bid to meet carers' needs. Agreement that a local authority will provide funding often comes late in the day leading to kinship carers feeling rushed. The inquiry also heard of local authority frustration at having to plug gaps in legal aid provision from already stretched local government funding.

A core message was that in working with and supporting families from an early stage could divert cases from the Family Court, avert the need for costlier and more intrusive interventions in family life, and smooth the progression of care proceedings where recourse to the court is necessary. This is in step with both the underlying principles of primary legislation and mandates set out in statutory guidance.

Our vision:

There is widespread agreement, reinforced by evidence and at one with the statutory framework in both England and Wales, that the best place for children to grow up is in their family, where it is safe for them to do so. Kinship carers step up to provide a safe and loving home for a child, ensuring they don't need to enter into or remain in the care system with strangers. The state should be supporting them.

Family and friends who are considering becoming kinship carers should be able to access early, specialist, independent legal information, advice and advocacy services. This would ensure they understand their rights and options and to have the opportunity to influence decisions within child welfare meetings and within court proceedings about the child's future and their support needs. This support should be available wherever they are on the child welfare continuum, from an early stage when a local authority first has concerns about a child's welfare, at the formal pre-proceedings stage, and during any care proceedings. It should also be available to those who are already kinship carers, either as a result of earlier proceedings or through informal arrangements, so they can seek advice on their current arrangements and whether to pursue alternatives or to challenge support plans.

The child welfare and family justice system should also enable kinship carers to have access to publicly funded legal advice and representation that is not dependent on the individual policies of local authorities or the generosity of solicitors providing assistance on a pro bono basis so that they are properly informed from an early stage about the options available to them and are represented where necessary. They should feel included, informed and empowered to influence decisions within child welfare meetings and within court proceedings about the child's future and their support needs. They should have all the information they need to make an informed decision when considering the type of kinship care arrangement they need to best support the child to thrive.

Specialist advice services such as Family Rights Group's free telephone advice line, part-funded by the Department for Education and currently working at full capacity, should be adequately funded to provide support and assistance to all families involved in the child welfare and family justice system. This would work alongside there being access to specialist legal advice and representation through publicly funded legal aid for those families where necessary. Currently this does not exist for most kinship carers. Kinship carers should not have to spend hundreds and thousands of pounds of their own money, sometimes leaving them in significant debt, in order to give a child in their family network a safe home and to secure the support the child and their care needs.

In working with and supporting families from an earlier stage, such a system would be more conducive to children being raised safely within their family network when they can't remain at home. In addition to better outcomes for children, strains on the care system and the Family Court would also be reduced.

To achieve this, we recommend the following:

National government should:

1. Ensure kinship care in all its forms is recognised and understood including in national and local government policy making, by legislating for a universal definition of kinship care. It is time to define kinship care.

2. Adequately fund not-for-profit independent legal advice, information services and advocacy services specialising in child welfare and family court law and practice. To ensure that kinship carers and potential kinship carers know their rights and options from the outset, and how best to secure the child's future with them and as circumstances change.

In private law:

3. Make available non-means tested early advice under 'legal help' to kinship carers and prospective kinship carers who are considering applying for a special guardianship order or child arrangements order.

4. The Ministry of Justice should fulfil its commitment to bring forward provisions to extend the scope of legal aid to prospective special guardians in private law cases. We would press for this to be non-means tested.

In public law:

5. Following a potential kinship carer having a positive initial/viability family and friends care assessment by children's services, non-means and non-merits tested 'legal help' advice should be made available to support carers through the full assessment process.

6. To mirror the commitment made in respect of private law, extend the scope of legal aid to prospective kinship carers in public law cases where a special guardianship order is being considered. We would also press for this to be non-means tested.

They should also consider extending this further to include all kinship carers who are considering taking on (or who have taken on) the care of a child where there is court, local authority or practitioner evidence which has determined that the child cannot live with their parents.

7. Where a prospective carer has received a negative initial assessment, non-means tested legal help would assist them in understanding whether they have cause to challenge an inadequate assessment process. If they do have cause, non-means but merit tested legal aid should be available.

8. Consider updating the 2011 Statutory Guidance for Local Authorities on Family and Friends Care, including making explicit the expectations on local authorities to: a) provide information and support kinship carers or potential kinship carers regarding accessing independent legal advice or representation; b) ensure they are transparent as to when the local authority funds legal advice and representation for carers who can't access legal aid.

Local government should:

9. Review their family and friends care policies to signpost where kinship carers or potential carers can get free specialist independent legal advice, and ensure policies set out clearly the criteria they apply when deciding whether to fund potential kinship carers to get initial independent legal advice and any subsequent legal advice and representation or help with court costs, if they cannot access legal aid.

To improve the functioning of the family justice system, including ensuring adequate data collection, national government and the courts should ensure that:

10. Approaches to measuring performance within the family justice system reflect greater understanding of the reasons why extensions to the 26-week timetable for care proceedings are sought and granted as well as how the court accounts for kinship care within proceedings. This should be underpinned by improved data processes including, but not limited to, data gathering to:

i) Identify the prevalence of timetable extensions arising from assessments of prospective kinship carers being conducted within care proceedings rather than at an earlier stage

ii) (Where initial or substantive kinship assessments form part of the evidence before the court) record whether the persons assessed had the benefit of any independent legal advice; and whether such advice was funded via legal aid, local authority funding or carers self-funding

iii) Record the number of orders made directing that a (prospective) kinship carer be joined as a party to care proceedings and the point in proceedings at which the application and order were made

iv) Capture whether as at the conclusion of proceedings any (prospective) kinship carer who was a party to the proceedings OR in whose favour an order was made had received any independent, legal advice and whether this had been funded via the local authority, via legal aid or through self-funding.

11. Facilitate formal opportunities for shared learning between the voluntary advice sector, legal practitioners and the judiciary regarding the precise advice needs of kinship carers. This should be organised in collaboration with kinship carers and have a particular focus on the implications of specific types of kinship care arrangement for interim and longer term practical and financial support for children and their carers.

A note on means testing

The inquiry evidence and broader research have shown that many kinship carers struggle financially when they take on the care of a child. We have also heard how the means test is a barrier to many carers accessing legal aid due to the Legal Aid Agency's very low income and capital thresholds. The committee heard that the current income thresholds are so low that many families with incomes level below the Joseph Rowntree Minimum Income Standards are excluded. Moreover, the present cost of living increases will be worsening the strains on families. The low capital thresholds affects carers who are asset rich but cash poor, such as those who have equity in their home or a modest pension. While the proposals from the Means Test Review currently out to consultation raise the thresholds, the committee also heard many carers would continue to be excluded under those proposals. Removing the means test for (prospective) kinship carers would mean that family and friends could get the advice and support they need to obtain the best outcome for the child.

The cost

The inquiry has not attempted to conduct an assessment of the financial cost of the measures we have set out. We would urge the government the commission the economic modelling required. However, as set out in this report, there is strong evidence to suggest that a modest investment in good quality legal support, especially from an early stage, would lead to longer terms savings for the taxpayer. This includes savings derived from children being diverted from entering the care system and from averting the need for public law care proceedings to be initiated. These are key drivers behind the increasing cost of children's social care across the UK and the significant pressures on the family justice system further exacerbated by the Covid-19 pandemic. The social costs of children becoming looked after, as well as the costs of operating the Family Court system which is under huge pressure, are also substantial. Diverting money towards supporting children to remain safely in their family network would not only lead to better outcomes for the children, but wider benefits for society and the taxpayer.

Appendices

Appendix A:
Further information about means testing

When a person is not automatically eligible for legal aid, they must pass the Legal Aid Agency's means and merits tests. This is often called 'means and merits' legal aid. It involves two separate tests. The information below concerns the means test.

Income

The Legal Aid Agency will first look at an individual's monthly gross income. If it is over £2657 (which is £31,884 per year) then they will not be eligible. If it is below this level, the applicant's monthly disposable income is then calculated by looking at their outgoings and whether they have any dependants which entitle them to deductions. For those with a monthly disposable income more than £315 but less than £733, they must pay a contribution towards their legal costs to be eligible. Those with a disposable income over £733 will not be eligible for legal aid. If an individual is in receipt of certain benefits then they are passported through the income assessment. If a person's income is sufficiently low, the Legal Aid Agency then assess their capital.

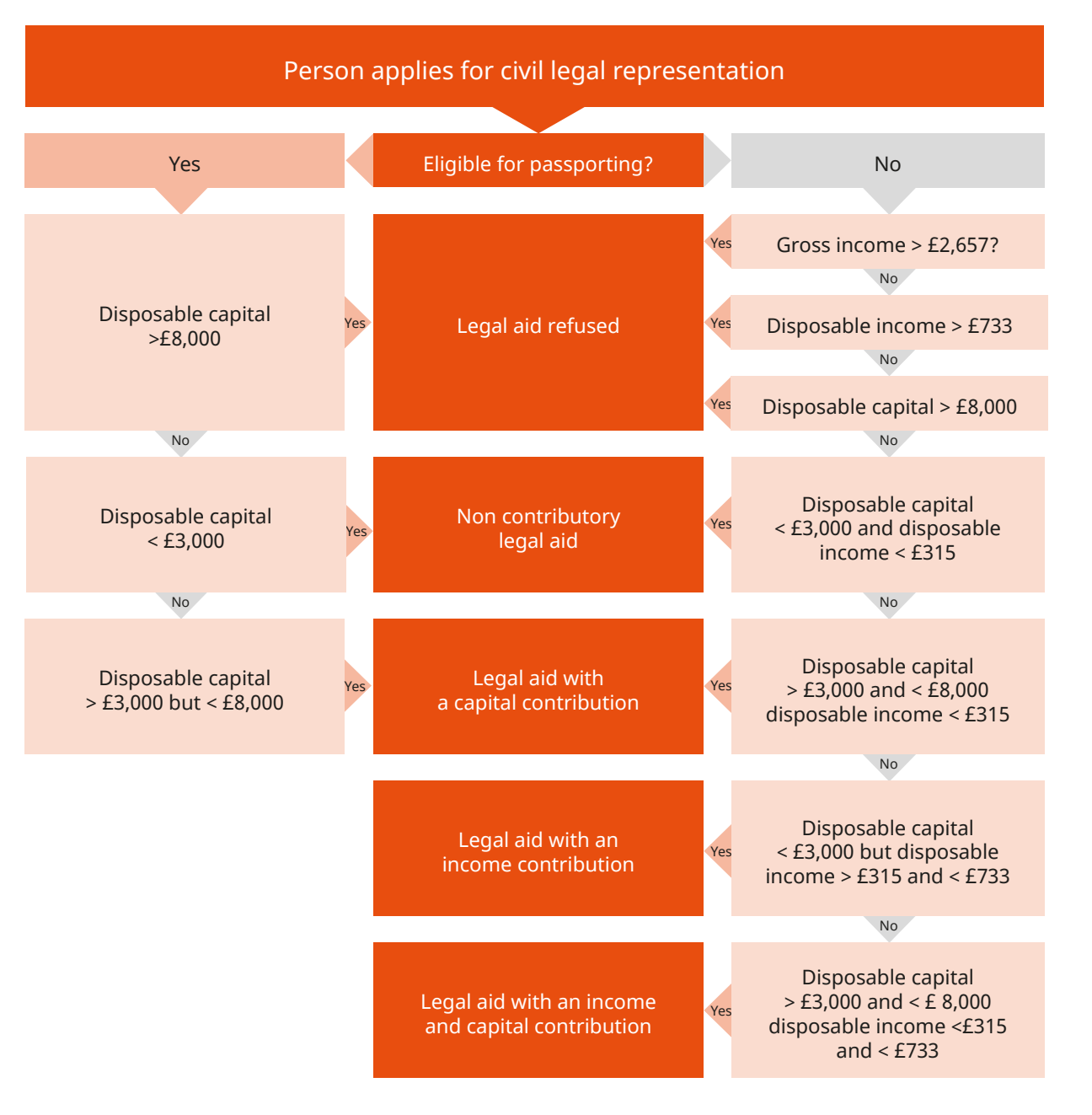
Capital

Capital can include savings, shares, properties and cars which are not in regular use or have a value above £15,000. The Legal Aid Agency must disregard up to £100,000 of an individual's equitable interest in their main dwelling house[75]. Pensioners may be allowed additional capital disregards if their monthly disposable income is below £315. If, after the disregards have been applied, the remaining capital is above £3000 but below £8000 then they will be eligible but must pay a capital contribution which is a one-off payment to the Legal Aid Agency16. If their remaining capital is above £8000 then they will not be eligible.

Evidence required:

The financial assessment conducted by the Legal Aid Agency is comprehensive. A person must provide three months bank statements from all open accounts in their name, including any joint accounts or accounts held for children that they are signatories to. They must provide documentation for any income or capital including any stocks, shares, or pensions. If there are any bank statements or other documentation missing, then it is unlikely that their application will be successful.

75 There are additional provisions when the capital is inaccessible, for example because it is tied up in the property which is a matter of dispute between the parties involved.



Source: Ministry of Justice (2022), Legal Aid Means Test Review, p.19.

Appendix B:
Survey data for England and Wales

The carers

Where they live:	Respondents	Percentage
England	452	96%
Wales	21	4%
Total respondents	473	

Regional breakdown of carers living in England:	Respondents	Percentage	Percentage of population of England living in those regions[76]
Prefer not to say	3	1%	
East of England	36	8%	11%
East Midlands	42	9%	9%
London	38	8%	16%
North East	62	14%	5%
North West	53	12%	13%
South East	98	22%	16%
South West	52	12%	10%
West Midlands	33	7%	11%
Yorkshire and Humber	35	8%	10%
Total respondents	452		

Their age:	Respondents	Percentage
15-17 years old	0	0%
18-24 years old	0	0%
25-34 years old	26	6%
35-44 years old	60	13%
45-54 years old	129	27%
55-64 years old	172	36%
65-74 years old	72	15%
75 years or older	12	3%
Prefer not to say	2	0%
Total respondents	473	

76 https://www.statista.com/statistics/294681/population-england-united-kingdom-uk-regional

What gender they define as:	Respondents	Percentage
Male	33	8%
Female	390	92%
Non-binary	0	0%
Prefer not to say	2	0%
Total respondents	425	

Their race or ethnicity:	Respondents	Percentage
White – English, Welsh, Scottish, Northern Irish or British	382	90%
White – Irish	1	0%
White – Gypsy or Irish Traveller	0	0%
White – Roma	0	0%
Any Other White Backgrounds	11	3%
Mixed – White and Black Caribbean	4	1%
Mixed – White and Black African	1	0%
Mixed – White and Asian	3	1%
Any Other Mixed or Multiple Ethnic Background	4	1%
Asian or Asian British - Indian	2	0%
Asian or Asian British – Pakistani	0	0%
Asian or Asian British – Bangladeshi	0	0%
Asian or Asian British – Chinese	0	0%
Any Other Asian Background	0	0%
Black or Black British - Caribbean	9	2%
Black or Black British – African	1	0%
Any Other Black, Black British or Caribbean Background	0	0%
Arab	0	0%
Other Ethnic Group	3	1%
Prefer Not to Say	2	0%
Total respondents	423	

Do they have a have a limiting long term illness or disability:	Respondents	Percentage
Yes	108	25%
No	296	70%
Prefer not to say	21	5%
Total respondents	425	

The number of kinship children (under 18s) they are currently raising:	Respondents	Percentage
1	262	55%
2	152	32%
3	37	8%
4	13	3%
5 or more	2	0%
0	7	1%
Total respondents	473	

Their relationship to the child or children they are caring for:	Respondents	Percentage
Grandmother	281	59%
Grandfather	42	9%
Aunt	81	17%
Uncle	6	1%
Brother	1	0%
Sister	3	1%
Cousin	7	1%
Great Aunt	31	7%
Great Uncle	3	1%
Friend	15	3%
Other (please specify)	40	8%
Total respondents	473	

Where carers are raising multiple children they could tick all that apply. Other responses included: step aunt; step grandfather; great, great aunt and uncle; and second cousin.

The kinship children

Their age (years old):	Number of children	Percentage
Under 1	14	2%
1-2	26	4%
2-4	108	14.5%
5-9	259	35%
10-15	262	35%
16-17	55	7%
18+	18	2%
Total respondents	473 respondents looking after 742 children	

Their race or ethnicity:	Number of children	Percentage
White - English, Welsh, Scottish, Northern Irish or British	448	81%
White - Irish	0	0%
White – Gypsy or Irish Traveller	1	0%
White – Roma	0	
Any Other White Backgrounds	14	3%
Mixed – White and Black Caribbean	33	6%
Mixed – White and Black African	7	1%
Mixed – White and Asian	14	3%
Any Other Mixed or Multiple Ethnic Background	16	3%
Asian or Asian British - Indian	0	0%
Asian or Asian British – Pakistani	0	0%
Asian or Asian British – Bangladeshi	0	0%
Asian or Asian British – Chinese	0	0%
Any Other Asian Background	0	0%
Black or Black British - Caribbean	10	2%
Black or Black British – African	2	0%
Any Other Black, Black British or Caribbean Background	2	0%
Arab	0	0%
Other Ethnic Group	3	1%
Prefer Not to Say	6	1%
Total respondents	470 respondents looking after 556 children	

Do they have any additional needs or disabilities?	Respondents	Percentage
Yes, they have a formal diagnosis	130	28%
Yes but they don't have a formal diagnosis	140	30%
No or prefer not to say	178	38%
Prefer not to say	18	4%
Total respondents	466	

Where they were living immediately before living with the kinship carer:	Number of children	Percentage
Living in the home of either or both parents	266	50%
Home of another relative	20	4%
Living in a residential children's home or unit	0	0%
Living with unrelated foster carers	141	27%
New born, straight from hospital	35	7%
Living with either or both parents in a parenting assessment unit or a parent-and-baby foster placement	19	4%
Mother and baby placement	12	2%
Other	31	6%
Prefer not to say	2	0%
Total respondents	471 respondents looking after 526 children	

Their legal status (eldest child only):	Respondents	Percentage
The child is under a Special Guardianship Order	317	69%
The child is under a Child Arrangements Order or Residence Order	47	10%
The child is under a Care Order or Interim Care Order	65	14%
The child is looked after under a Section 20 voluntary arrangement (England) or Section 76 (Wales)	8	2%
The child is under no legal order (and is not in the care system under a voluntary arrangement)	18	4%
The child has been adopted by you	1	0%
Not sure or prefer not to say	5	1%
Total respondents	461	

If the kinship carer answered Special Guardianship Order, Child Arrangements Order or Residence Order, was that child previously looked after?	Respondents	Percentage
Yes, the child was living with me as their kinship foster carer	131	36%
Yes, the child was previously living elsewhere with a foster carer	97	26.6%
Yes, the child was previously in a residential or children's home	1	0%
Yes, in another placement (please give details)	4	1%
No	84	23%
Not sure	11	1%
Total respondents	364	

If the kinship carer is raising other kinship children, what is their legal status?	Respondents	Percentage
The child is under a Special Guardianship Order	154	36%
The child is under a Child Arrangements Order or Residence Order	19	4%
The child is under a Care Order or Interim Care Order. (This means you are their kinship foster carer)	50	12%
The child is looked after under a Section 20 voluntary arrangement (England) or Section 76 (Wales) which means you are their kinship foster carer	5	1%
The child is under no legal order (and is not in the care system under a voluntary arrangement)	8	2%
The child has been adopted by you	1	0%
Not sure or prefer not to say	9	2%
I only have one kinship child	193	45%
Total respondents	427	

Legal advice and representation

Has the carer ever had legal advice about their rights and options for their kinship child/children:	Respondents	Percentage
Yes	260	55%
No	180	38%
Not sure	30	6%
Total respondents	472	

Where the advice was from:	Respondents	Percentage
A high street solicitors firm	165	55.18%
A solicitors firm recommended by the local authority	84	28.09%
A barrister	21	7.02%
A law centre	5	1.67%
Family Rights Group	49	16.39%
Another voluntary organisation	21	7.02%
A family member or friend	12	4.01%
A Facebook Group	18	6.02%
Other	19	6.35%
Prefer not to say	5	1.67%
Total respondents	399	

Respondents were able to tick more than one option. Some respondents who ticked no or unsure for the previous question then answered this question, suggesting they had received advice from some sources. Other voluntary organisations included: Kinship Carers UK, Kinship (Formerly Grandparents Plus), Citizens Advice Bureau, Fostering Network, Child Law Advice Service, ESCAPE Family Support, Hetty's Charity in Mansfield, More Than Grandparents in Sunderland. Some also cited the paid service, FosterTalk.

How the cost of the advice was covered:	Respondents	Percentage
It was provided for free (e.g. Family Rights Group Advice Line)	38	14%
The local authority paid the costs in full	115	43%
The local authority paid a contribution	34	13%
I qualified for legal aid for some of the costs	11	4%
I qualified for legal aid for all of the costs	32	12%
I paid the costs in full	49	18%
I paid part of the costs	20	7%
My family and friends helped pay the costs	9	3%
Other	14	5%
Total respondents	268	

Respondents were able to select multiple options.

Has their kinship child/any of your kinship children been the subject of family court proceedings:	Respondents	Percentage
Yes, my kinship child/all my kinship children were	354	77%
Yes, for some of my kinship children but not all	8	2%
No	63	14%
Unsure or prefer not to say	37	8%
Total respondents	462	

Were they represented by a solicitor/barrister in court:	Respondents	Percentage
Yes, I was represented by a solicitor/barrister for some of the time	76	27%
Yes, I was represented by a solicitor/barrister for all of the time	90	32%
I represented myself some of the time	15	5%
I represent myself throughout	70	25%
Unsure	31	11%
Total respondents	282	

How were the costs of the solicitor/barrister in court covered:	Respondents	Percentage
The local authority paid the costs in full	74	40%
The local authority paid a contribution	10	6%
I qualified for legal aid for some of the costs	17	10%
I qualified for legal aid for all of the costs	32	19%
I personally paid for some of the costs	14	8%
I personally paid for all of the costs	27	16%
Family and friends paid for some or all of the costs	6	4%
Total respondents	168	

Respondents could tick multiple options.

How much have carers personally had to pay towards the costs of legal advice, court fees and/or legal representation in relation to your kinship child/children:	Respondents	Percentage of those with costs
Nothing	272	-
Under £250	26	16%
£251-£500	22	14%
£501-£750	17	11%
£751-£1000	12	7%
£1001-£1500	8	5%
£1501-£2000	12	7%
£2001-£3000	13	8%
£3001-£4000	8	5%
£4001-£5000	4	2%
£5001-£10000	26	16%
£10001-£20000	4	2%
£20001-£30000	4	2%
£30001-£40000	1	1%
£40001-£50000	0	0%
£50001-£60000	1	1%
£60001-£70000	0	0%
£70001-£80000	1	1%
£80001-£90000	1	1%
£90001-£100000	2	1%
More than £100,000	0	0%
Total respondents	434	

Do carers feel they knew enough about the legal options and their implications in terms of support to make an informed decision, when they took on the care of their kinship child/ children:	Respondents	Percentage
Yes	58	13%
No	367	82%
Not Sure	25	6%
Total respondents	450	

Are carers satisfied with the current legal status of their kinship child/children:	Respondents	Percentage
Yes	213	48%
No	157	35%
Not sure	76	17%
Total respondents		

Employment situation and finances

Employment status of the kinship carer:	Respondents	Percentage
Full time paid work	82	18%
Part time paid work	102	23%
Retired	93	21%
Unemployed but looking for work	10	2%
Not working due to ill health	47	10%
Not working due to caring responsibilities	113	25%
Studying	3	1%
Total respondents	450	

Did taking on the kinship child affected working hours:	Respondents	Percentage
Yes, gave up work	193	52%
Yes, reduced hours	108	29%
Yes, increased hours	1	0%
Yes, made other changes to working patterns	44	12%
No, didn't change working patterns	28	7%
Total respondents	374	

Whether the kinship carer receives a regular financial payment or allowance from the local authority:	Respondents	Percentage
Yes, Special Guardianship Allowance	249	55%
Yes, Foster Care Allowance	70	15%
Yes, Child Arrangements Order/Residential Order allowance	15	3%
Yes, regular Child in Need payment	1	0%
No	116	25%
Unsure or prefer not to say	11	2%
Total respondents	455	

If the child's legal status changed whilst they were with living with the carer, did that affect the financial support received from children's services:	Respondents	Percentage
Yes	139	34%
No	221	53%
Not sure/prefer not to say	53	13%
Total	413	

Has becoming a kinship carer caused you financial hardship:	Respondents	Percentage
Yes	319	72%
No	66	15%
Not sure/prefer not to say	56	13%
Total respondents	441	