



Association of **Lawyers for Children**

Promoting justice for children and young people

PARLIAMENTARY TASKFORCE ON KINSHIP CARE

REQUEST FOR WRITTEN EVIDENCE

This response dated 30.04.19

Response of the Association of Lawyers for Children

**Contact:
ALC Administrator
Association of Lawyers for Children (ALC)
1GC Family Law
10 Lincoln's Inn Fields
London
WC2A 3BP
admin@alc.org.uk
Website: www.alc.org.uk**

The Association of Lawyers for Children (hereafter “ALC”) is a national association of lawyers working in the field of children law. It has close to 1,000 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners from both sides of the legal profession practising in different areas of the country. Several leading members are specialists with over 20 years’ experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children law and hold judicial office. The ALC exists to promote access to and equality of justice for children and young people within the legal system in England and Wales in the following ways:

- i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
- ii. lobbying against the diminution of such mechanisms;
- iii. campaigning and advocating on against any form of discrimination which may affect children within the family justice system
- iv. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children;
- v. providing a forum for the exchange of information and views on the development of the law in relation to children and young people;
- vi. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
- vii. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law and welcomes this opportunity to provide its views in respect of the consultation about the High Court Urgent Applications Rubric.

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Introduction

The cross-party Parliamentary Taskforce on Kinship Care was launched in December 2018. It aims to raise awareness about, and support for, children in kinship care and highlight the importance of this option for children who cannot live with their parents.

The Office of Anna Turley MP and Family Rights Group provide the secretariat for the Taskforce.

This request for written evidence is part of the Taskforce's evidence gathering.

The Taskforce will produce a report with recommendations by Autumn 2019.

A copy of Taskforce report will be sent to all organisations who have participated in the survey and indicated they wish to receive a copy.

Please return this completed evidence form by 30th April 2019 to the Parliamentary Taskforce c/o cashley@frg.org.uk or by post to Parliamentary Taskforce c/o Cathy Ashley, Family Rights Group, Print House, 18 Ashwin Street, London E8 3DL.

Defining Kinship Care

The definition of kinship care is 'any circumstance where a child is in the care of a friend or family member other than their parent'. This is also known as family and friends care.

Kinship care arrangements can include: family and friends foster care, children who are subject to a Special Guardianship Order, Child Arrangements Order or Residence Order, and children living in an informal arrangement where there is no court order (which includes private fostering arrangements).

Name of respondent:	Association of Lawyers for Children
Role of respondent:	Representative group for lawyers working with children and families in the Family Court
Organisation, if relevant:	-

Region, if relevant:	National
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1) What do you think are the main challenges faced by kinship care households (including challenges faced by the child, carers and other family members)?

At the outset, identification of those within the friends and family network (FaFN) who may not only be potential alternative carers for the child but also be able to assist a parent to continue to care for the child, can present a challenge for local authorities (LAs). Parents may be sceptical and reluctant to suggest names of those within the FaFN because they fear that to do so may give the impression to the LA that they (the parent) do not want to continue to care for their child, or that the LA may interpret this as some form of recognition on the parent's part that they do not believe they have good enough parenting capabilities. Related to this, members of the FaFN who may be aware that a parent is struggling or that the LA has become involved, will also be reluctant to do anything that could be perceived by the parent as undermining of that parent. This is a persistent challenge for LAs and thus is a challenge for the child and their interests. This is not helped by the focus on the part of social workers and the court on FaFN members "being put forward" or "putting themselves forward", which creates a perception that the LA has no responsibility to be pro-active.

Kinship carers often face challenges through the assessment process. It is not uncommon for these prospective carers to have a poor understanding of what the assessment process entails, what it is that is being asked of them, that usually the 'ask' is that they provide a permanent home to the child, why intimate questions are being asked, including historic background information and what their rights are in the event that they do not agree with the resulting assessment report. That these issues are amplified when dealing with a possible placement out of the jurisdiction where social services do not have this extent of involvement when dealing with family arrangements.

Kinship carers also experience challenges where they are not joined as parties to any court proceedings that are already in train in relation to the child that they are being asked to provide a home for. This creates an information vacuum for kinship carers. They may often feel excluded, unimportant and disempowered. Whilst it is not always necessary they be made party to proceedings, when they are they generally do not have representation and therefore their participation (and the quality of information they receive) is limited. Those within the proceedings need to be alert to ensure necessary disclosure is made available to the relevant people within the FaFN.

Related to the above, there is a lack of consistency around what should be reasonably expected of a LA in relation to the funding of legal advice for prospective kinship carers. Each LA will have its own guidelines about this but in our experience, there is little if any consistency between LAs and even within LAs, there may be a great disparity between what is offered to one kinship carer

and another. We regularly see and hear of situations where a LA will offer funding which will only achieve (at best) the most rudimentary provision of legal advice; funding is almost without exception too little to meet the task required and there is an increasing reluctance on the part of solicitors in some areas to take on such a client because of the cost implications. The financial tensions in LAs generally is of course recognised and it should be made clear at the outset what the advice is expected to cover to ensure best use of funds, at least thematically. Whilst hourly rates vary from area to area the bigger issue seems to be the number of hours an LA will fund.

Assessments for support and services is usually a fraught battle for kinship carers. If they raise issues about support that they feel may be required for them, the household or the child, they are too often faced with resistance from some LAs. Kinship carers cannot be expected to be aware of the growing body of evidence of the likelihood of problems not arising for several years, they understandably tend to be primarily focussed on short term concerns. Where an assessment of suitability to care has been concluded positively, this may well be the last stumbling block.. While LAs may not openly exert any pressure but there is often a perceived pressure, kinship carers will be aware that the child's interests require prompt decisions be made. Kinship carers may be aware of a court process being in place, court deadlines and time limits. These aspects may of themselves serve to place pressure on kinship carers to accept proposals for support and services from the LA, which they do not truly believe are sufficient. This may cause significant difficulties for the child in the future. In our view it is essential that the time is taken to get these aspects right from the outset for the benefit of the kinship carers and therefore in turn the child.

Again, while not usually overt, kinship carers can sometimes be made to feel that by asking for support and services, they are indicating they may not be able to cope, they are putting their needs above the child's or that they are looking to gain (financially or otherwise) from the request for support rather than genuinely wanting to care for the child. Often the subtlest words and conversations can give that impression to a kinship carer.

Asking for support is not easy for anyone and kinship carers may struggle to care for a child without asking for support because they do not want to appear to have 'failed', to have let down the child or to be giving the impression that they are not able to cope with the caring task. Any delay and hesitance on the part of kinship carers in asking for support risks exacerbating difficulties and challenges that they are already facing and is unhelpful to the child. Creating a safe space and trusting relationships for kinship carers to be able to ask for support is essential.

Unlike adoptive placements, where the child's face to face contact with birth parents is rare and unlike long-term foster care placements where support with contact is usually provided, kinship carers will inevitably have to facilitate contact with the child's parents and other family members. This makes the caring task very different from that generally experienced by adopters. Issues around contact can present as challenges to kinship carers.

2) As a practitioner or organisation working with children, kinship carers and/or families involved with the child welfare/family justice system, what are the main challenges that you face in enabling more children to be safely cared for, and effectively supported, within their family network?

All the above listed challenges are those that we come across and see families facing.

Lawyers who advise, assist and represent kinship carers, will commonly experience situations where a LA will fund initial legal advice for a kinship carer but the level of funding is not sufficient to cover what the lawyer reasonably believes is required by way of professional legal services. This poses real difficulties as it may mean that only very basic legal advice can be provided which may be fairly generic in nature. Alternatively, lawyers will often provide additional services on a pro bono basis which is an unsustainable model to work on.

The time limit for Part 4 Children Act 1989 (CA 1989) proceedings is a challenge faced by our members across the country. Strict adherence to the 26 time limit can have a detrimental affect not only on the kinship carer being assessed but also the social work professionals tasked with conducting such assessments. They are placed under incredible pressure to finalise assessments quickly and then may find their assessment reports come under scrutiny and face criticism for not being thorough enough. This problem is especially acute where such assessments were not commenced during the pre-proceedings phase (PPP) or where potential FaFN carers (including kinship carers) are put forward for assessment during the currency of Part 4 proceedings. Where assessments are rushed or do not cover matters with sufficient care and detail, there is an increased risk that the care, placement and support plans which flow from such assessments will have gaps.

It is noted that there is a 16 week timeframe allowed under the provisions of Regulation 24 for a detailed assessment and a further 8 weeks if Regulation 25 approval given; the court timetable for cases rarely takes into account the fact that outside of s31 proceedings the LA and the family would have significantly more time to work together to ensure that a robust assessment is completed if they were to be assessed as a LA foster carer or potential Special Guardian (SG) . It is the experience of many LAs that there is a sense of pressure to rush their assessment and that the number of sessions needed to take place in such a short space of time can be quite overwhelming and not only put possible alternative carers off, but also lead to a risk of future placement breakdown. There is an added layer difficulty if the potential carer is abroad. This commonly means the assessment is truncated or follows a different format to those used in this jurisdiction. As a consequence, the potential carer may not have sufficient time for reflection and/or further detailed exploration of any issues which may have arisen during the assessment process.

Many comment on the detailed and careful process that prospective adopters go through when their suitability to be an adoptive carer is conducted. There is

sometimes a sense in some quarters that assessments of suitability of kinship carers or those from the wider FaFN are not as detailed. In our view, these are unhelpful comparisons to draw: prospective adoptive carers are not usually being assessed in relation to their suitability to care for a particular child, whose specific needs are already identified and known. It is their suitability to parent / care for a child generally which is under consideration. Kinship carers on the other hand are having the suitability to care for a particular child assessed; this is very different. This is not so clear-cut in relation to connected foster care assessments, where the assessment is based on National Minimum Standards rather than a global welfare evaluation. Furthermore, how they will be able to promote the child's relationship with birth parents and others within the child's network is looked at. Again this aspect makes for a very different assessment task. Yet, the assessment period can often be contracted because of pressures to conclude proceedings within a time limit.

As suggested above in answer to [1] the issue of support and services to kinship carers is vital not only for the adult carer but crucially for the child who more than anything needs to benefit from a sustainable good placement. We believe that any barriers experienced by kinship carers to being able to ask for, be assessed for, seeking a review of and ultimately securing support and services is bad for the child. Where needs identify that certain support and services are required, these provisions must be put in place with urgency to ensure that placements do not deteriorate to the detriment of the child. One noticeable difference is that Connected Person Foster carers are entitled to training. In contrast, the menu of SG support services (see Special Guardianship Regulations 2005) does not include any requirement to make training available. This almost certainly reflects the original expectations of how children would come to be subject to SG, but does not reflect the reality of what SGs are now expected to do.

3) Are you aware of any effective ways of working, policies or services (either where you work or elsewhere) that enhance the chances of children remaining safely within their family network?

Please give details and/or enclose any relevant research evaluation or background information.

In this section we do not necessarily identify particular policies or services in specific LAs but we make, what we hope are helpful general comments.

Making early use of what are typically called Family group conferences (FGCs) is an important service. FGCs can be known by other names (to emphasise that it is about a network of support and not just family members) but the tool essentially seeks to bring together those from the FaFN to consider the issues of concern and to seek to construct a family plan. This is important for various reasons: (a) to be able to identify at an early stage those within the FaFN who may be put themselves forward for assessment as an prospective alternative carer if the need for that arises; (b) to consider what support and help could be offered from that FaFN to the parents to continue to care for the child – recognising that removal from the family home is drastic and may not be

necessary if the parents can be supported possibly with professional support services but also those valuable aspects of support that the FaFN can provide; (c) to consider not just the 'hard' support e.g. taking the child to school on certain days, or caring for the child on a weekend but also those much 'softer' aspects e.g. maybe a mid-week phone call to the parent to check in and see how he or she is doing, to listen and provide a space for the parent to simply converse; (d) to dispel any misunderstanding or myths about the nature of support from the FaFN i.e. that by coming forward to support, one is undermining the position of the parents.

Providing training to kinship carers is very important and we do not often hear or see enough about this. When alternative care is considered to be necessary and the FaFN is being explored to identify prospective alternative carers for the child, the focus is very much on the assessment of suitability to care but little, if any attention is given to the benefits that kinship carers can gain from training. A panoply of training materials exists in the social work professional space for prospective adopters and on a myriad of issues e.g. backgrounds of children and why they come into care, attachment, challenges and transitions to new situations, identity, heritage and life story work. While much of the materials and resources which already exist are tailored to the adoption task, there will inevitably be much which will translate and be relevant to those from the FaFN who are caring or about to commence caring for a child. We believe that good materials and resources could be adapted for kinship carers. Much knowledge and skill-enhancing can be achieved through e-learning. We believe that building confidence and skills through training is necessary and should be a high priority for social work professionals working with kinship carers. In making this suggestion, we have in mind that the children who come to be placed with kinship carers or adoptive carers are the same cohort of children: they are looked after children or children on the edge of becoming looked after – all who have had adverse childhood experiences which had led to LA involvement. If training is considered a priority for prospective adopters who may come to care for children from this cohort, then the same priority will (in our view) exist for kinship carers. It should already exist for kinship foster carers, as they should be treated the same as other foster carers, but there is no requirement for it to SGs. This could be done by adding it to the list of services in Special Guardianship Regulations. There is a reference to training in Reg 3(1)(e)(i), but that is only in relation to meeting the child's special needs, not the wider training that foster carers receive.

We would like to see LAs encourage or better encourage kinship carers to seek support. While assessment may take place in advance of any formal placement arrangements being made (and possibly legal orders being made), a child's needs and circumstance can change quickly and frequently. Kinship carers should be able to approach the LA to discuss such matters in a partnership-working context and to feel encouraged and supported to ask for help where they are experiencing challenges. Where this culture does not exist and kinship carers feel (for whatever reason) unable to ask for help, a higher risk of placement disruption exists - causing unhappiness and instability for the child.

We would like to see wider approval within the family justice system of the granting of extensions to the 26-week time limit (especially where the potential carer is not in the jurisdiction) where this is necessary to ensure quality assessments are achieved. This ultimately benefits the child and is a welfare consideration. We believe that judges sitting at all levels of the Family Court should not slavishly stick to the time limit where there is good reason to extend the limit.

4) Are you aware of any helpful approaches, processes or ways of working that enhance the chances of children remaining safely in their family network during:

a. Formal pre-proceedings

FGCs are essential pre-proceedings to enable children to remain at home. Parents need help to understand that these can look at support and not just alternative care. We have experience of LAs issuing care proceedings without having held an FGC only for a suitable family member to be identified at the first hearing or interim contested hearing. Quasi FGC's are taking place at court on the day that the court is being asked to sanction removal due to the LA having failed to explore and assess the support available to enable a child to remain within the family. The provision of support to families is also vital; this can include advocates, collaborative working externally between different LAs where necessary and internally between children and adult services (for example where the parent has learning difficulties and has their own social worker and resource allocation), a proper assessment of a parent's needs and whether they are entitled to support from the local authority, family intervention workers to provide practical support to families and sign posting to agencies who can provide support to families. Kinship carers should also be funded to obtain sufficient legal advice.

We would welcome an ability and willingness by LAs to commission assessments at an early stage of the process. This requires a financial commitment on the part of the LA, who may feel more inclined to leave expensive assessments to the proceedings stage so that the court will direct that the cost is shared.

b. During proceedings

Again, the FGC is essential but this needs to have taken place before the court is being asked to sanction removal. If the court refuses to sanction removal then the support identified above could enable children to remain at home. However, the pressure of proceedings and the 26 week time limit often creates pressure which often does not afford a family time to demonstrate that with the assistance of support they can maintain changes to enable children to remain at home. Therefore, whilst providing support during the proceedings should be attempted, it cannot be a replacement for work having been undertaken pre proceedings. Kinship carers should have access to sufficient legal advice. Kinship carers often do not have time to be prepared for a child being placed

with them if work has not been undertaken pre proceedings. This can increase the chances of placement breakdown.

c. Post proceedings

Family support intervention, counselling and other support services can be beneficial to enable children to remain at home. However, it is our experience that there is very little support available to families post proceedings due to the lack of resources. Adequate financial provision can assist kinship carers but there is a lack of therapeutic support and intervention available for the children placed in their care.

5) What are the key recommendations that the Taskforce should make (these could be aimed at the government, local authorities or other public bodies) that would:

a. Enable more children to safely live within their wider family network?

1. Family Group Conferences must be undertaken at the first opportunity when local authorities are involved in safeguarding of children.
2. Kinship carers must be provided with sufficient free independent legal advice both at the start of the LA's involvement and before any final orders are made.
3. Provide financial support and practical services to families.
4. Revisit the application of the 26-week time limit when children are/will be placed with kinship carers
5. Review the Special Guardianship support offered, to include training (some of which will be similar to that given to foster carers, but there will also be a need for bespoke training)
6. Update the 2011 Family and Friends Care statutory guidance and make it more explicit about the importance of local authorities trying to ensure that access to support is not constrained by the child's legal status. The requirement to have a Friends and Family Care policy should include details of the LA's approach to assessment of carers.

b. Enable more children to be effectively supported and thrive in kinship care?

1. Provide therapeutic support to children. CAMHS is not able to provide the types of therapy required by children who have had difficult life experiences.
2. Provide better support for contact between children and their parents/siblings instead of using contact centres.
3. Provide a mechanism for respite/support for kinship carers preferably within the wider family. Consider all options including a back-up plan in case of placement breakdown.

6) Are there any further points that you would like to make, that you think would assist the Taskforce?

No.

7) Would you be willing to be contacted by the Taskforce as part of its evidence gathering?

Yes/No

If yes, please provide contact details: please use details provided below.

8) Would you like to receive information and updates about the work of the Parliamentary Taskforce on Kinship Care? If yes, please provide your email address.

Yes/No

Email address: admin@alc.org.uk