



THE ALL PARTY PARLIAMENTARY GROUP ON

KINSHIP CARE

APPG INQUIRY ON LEGAL AID

WRITTEN EVIDENCE SUBMISSION – NICOLA JONES-KING, HEAD OF FAMILY & CHILDREN AT TAYLOR ROSE MW. SUBMISSION MADE IN AN INDIVIDUAL CAPACITY (2204004)

I have felt compelled to submit evidence to you as today has brought into sharp focus the issues, as the two cases I have spent the day on, would both have been much better and quicker if the family members concerned had been able to access legal aid.

I have been in court this afternoon on a final hearing in care proceedings, I acted for mother who has substance misuse issues, the children were placed at the beginning of proceedings some 66 weeks ago! with their Aunt, under an ICO, the Aunt wished to care but failed to fully meet the needs of the younger child and her SGO assessment was negative. The case was adjourned to look at alternatives. The maternal grandparents were also assessed, they had a positive SGO, the Local Authority sought to place with them, but they felt they needed the ongoing support a care order would provide so the Local Authority took them to fostering panel, but were unsuccessful. A further adjournment of proceedings. The children particularly the elder who is almost 16 wished to stay with the Aunt. The LA care plan favoured the younger child moving to the grandparents under an SGO, everyone wanted the LA to remain involved for a period to support, and a supervision order or support under Child in Need plan was on the cards. Neither Aunt or Grandparents were able to secure legal aid, all are working, none were able to fully understand the nuance of the interaction between care orders, SGO, CAO, supervision orders and Child in Need plans. What they were able to do to manage contact with mother and her ongoing parental responsibility under those options. What support the LA would continue to provide and how. The proceedings had been adjourned several times which they tried to get advice, and while the way through was identified, our conclusion today at 66 weeks was a SGO of the younger child to the grandparents supported by a CIN plan and an CAO to the Aunt of the older child on an exceptional basis as she is now 16 with a 6 month supervision order. An unusual case, but it highlights the minefield kinship carers can face. Early and independent legal advice would have helped them focus realistically on the options and could have allowed the case to conclude several months sooner.

I then as I returned to the office picked up an email from a colleagues assistant, looking for assistance with an SGO application, my colleague being off sick, the applicant is LA funded to apply, on a private basis, she has been caring for a friends child, that friend died, leaving a will appointing her testamentary guardian, but the will was unsigned, she has no legal status regarding the child who she has cared for for some years, as her friends health was failing. The LA had positively assessed her for SGO, but refused any financial support as it was a private application, and said their policy limited such assistance to SGO's arising out of care proceedings, except in "exceptional circumstances" but they would fund her one off advice. Our advice was to challenge that and after intervention by ourselves and robust observations from the court a proper package has been negotiated, had it not been this child may have gone into care, without any guarantee that her cultural heritage would be maintained or so closely matched as it is by our client,

As the committee's enquiries will have already highlighted kinship carers are key to offering children the opportunity to remain within their birth families rather than face permanent removal by adoption or particularly for older children (beyond the age where adoption is

possible) long term fostering with all of the uncertainty and instability which sadly so often goes with it. The loss of wider family connections, cultural and family history. And yet the current system and the lack of Legal Aid provision means that those individuals considering offering kinship care struggle to seek legal advice or even to understand that they are entitled to be heard or considered within proceedings. My two cases today, are very different but highlight exactly the issues, and how the availability legal aid could make a real difference.

One of the most common things we hear from clients when we do meet them in this situation, is that they have little or no understanding of the applications and rights the family members have in respect of children they are concerned about. Very few family members seem to even be aware that they can make applications under the Children Act for child arrangements orders. Most assume that if a parent does not offer them time with the child then they are stuck with that. The issues for kinship carers therefore go beyond Legal Aid issues but to the general lack of public awareness of the potential applications that family members can make.

As a large family team it is not exaggerating to say that we are inundated with enquiries from potential kinship carers only a small proportion of which we can see and assist. The primary reason for this difficulty is that many cannot afford to pay for legal advice and many only approach a solicitor literally at the eleventh hour. Many of these enquiries come through to us saying that the individual needs advice because they are in Court within the next seven to ten days. It is almost impossible to see and properly advise an individual in that situation and it is the primary reason why many struggle to obtain legal advice because they simply present too late and with Legal Aid rarely able to fund the advice.

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. That does not serve either them or the children they are seeking to care for well. It causes delay in proceedings because the Court cannot be satisfied that the individual has had adequate advice and we often see issues resolution and potential early final hearings delayed and adjourned because of issues arising around whether the kinship carer has had legal advice and whether they have understood what SGO means and how it works and whether there is adequate provision for the child if they do take on their permanent placement. This could be avoided if Legal Aid was available to enable early advice.

From our experience, those seeking legal advice fall into four main categories: -

1. Family members who have concerns for a child within their family network. That child may already be known to social services but the family member is uncertain of whether they have any rights to do anything about their concerns and is possibility being or probably being denied contact with that child. The significance of individuals in this situation has obviously been brought into stark relief by recent child deaths that have gone through the criminal courts where family members were reporting concerns and felt powerless to intervene.
2. Kinship carers who are already caring for a child either because a parent has died, is unwell, has gone abroad or has effectively abandoned the child with them and they are uncertain how to legalise the arrangements and are suddenly finding themselves with issues around securing school places, benefits or dealing with immigration and other issues.

3. Kinship carers who have been positively assessed by a Local Authority and need advice on the special guardianship order or alternative orders and advice on the assessment that has been undertaken of them and the financial package being proposed and will have been told that the Local Authority will fund one off fixed fee advice.
4. Kinship carers who have been negatively assessed by a Local Authority but wish to challenge that assessment and make an application to Court and be represented but who do not know what they need to do or they have even been lead to believe that they have no right to challenge.

As the committee is aware none of these individuals are able to access Legal Aid automatically even for initial advice. This is a significant gap in Legal Aid provision as 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 Authority's 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. Court often face inevitable adjournment when faced with a care plan for adoption or an incomplete kinship assessment that is challenged. The benefits to help to relieve the pressures on the system which can currently be said to be in crisis are therefore significant. By making it clear to family members that they can access early legal advice under Legal Help they would be better informed and better able to act at an earlier stage.

Initial Legal help advice should be available on a non means and non-merits assessed basis, the small additional legal aid spend is likely to be well within the original budgeting for legal help, which has fallen off significantly since LASPO was introduced, meaning this may not in effect be even costing more than originally budgeted for. Means and merits tested Legal Aid should be available to kinship carers to make freestanding applications for child arrangements orders and special guardianship orders where they are already caring for a child but do not have any formal legal status or where they are concerned for the safety of a child and believe that action needs to be taken but no public law proceedings are currently in place. They should be able to do so without needing gateway evidence as it is this which currently acts as a bar, alongside the impacts of the capital limits which particularly effect grandparents with capital in their home. A capital disregard akin to that used in domestic abuse cases could be introduced to allow kinship carers to access representation when needed.

The introduction of legal help to all Kinship carers would weed out those that have genuine need, and ensure all have access to advice. Similarly non means non merits tested Legal Aid funding should be available within public law proceedings to challenge negative kinship assessments without the need for additional gateway evidence. To some extent this is available now but it is something of a lottery as to which kinship carers are granted Legal Aid and which are not and it can take some weeks for such Legal Aid applications to be processed and granted. Again a capital disregard would needed. If initial Legal Help was available for the purpose of advice and assistance at an early stage that would hopefully allow family members to come forward and seek legal support earlier on and by making Legal Aid available across both private and public proceedings in these situations overall delay could be avoided. Applications are still subject to judicial scrutiny in terms of seeking leave to be joined to proceedings or seeking further assessment so any concern about this opening a floodgate is not justified. But 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.

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. Some Local Authority’s will allow solicitors a little negotiation to agree a fee but generally that is not the case. The work involved includes reading and considering the assessment of the kinship carer which generally runs to around forty or so pages: going through the financial support plan: explaining the law in relation to those issues to the kinship carer: looking specifically at what the needs of that child are in terms of ongoing support: and then considering and advising what may be available which has not been included which can then lead on to the need to negotiate with the Local Authority: advice on the consequences and effects of the available orders, special guardianship, child arrangements or even adoption orders in some situations; the interaction of supervision orders and often the key issue of management of parental or sibling contact in the long term. 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.

Therefore, if this was to be offered under the Legal Help scheme it would need to be at a higher fixed fee than the public law or private law lower. Even the public law outline higher fixed fee at £345 is below the amount of work involved and it would be my submission that if this is to be offered as initial advice and assistance under Legal Help it would need to attract its own level of fixed fee in the region of £500 to £600 in order to secure solicitor availability. The advantage of investing in this form of advice through the Legal Aid scheme is significant because it will substantially reduce delay but allow the scheme to be managed within the existing Control Work Scheme to provide essential initial advice for all four types of kinship carers set out above, without any additional IT or infrastructure costs for the Legal Aid Agency or solicitors, as we already have that in place, making it a practical and cost effective way to approach it.

If it was clear that the issues are going to be contested i.e. the kinship carer has been negatively assessed and has a case to challenge that in Court their ability to be granted a Legal Aid certificate should be non-means and non-merits tested within public law proceedings with a capital limit disregard and means and merits tested in private law proceedings but without the need for gateway and with a capital limit disregard . In private law applications it is generally the lack of gateway evidence which is a bar to kinship carers securing representation in Court. Many kinship carers in the second category as set out above 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 LAS PO requirements and are on limited incomes so cannot afford to make applications to court.

It is often said by the court when considering final orders and the making of a special guardianship orders to a kinship carer that they are being trusted by the Court with making decisions for the child’s future. A special guardianship order gives considerable responsibility to a kinship carer but their voice is not represented or even part of the picture at final hearing in the majority of cases. It is clear that the primary barrier to this is the lack of Legal Aid and their inability to easily access advice. If they were heard, advised and represented at an early stage it should speed up proceedings as it will ensure that their concerns and issues are heard

directly by the Court not filtered by the Local Authority or through the final enquiries of the guardian or in some cases essentially not heard at all. This can lead to misunderstandings, a lack of clarity and significantly to delay proceedings. 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. They also generally have questions about contact and how that can be managed and where they can go for support should there be issues with the parents in the future. The potential therefore for reducing delay in proceedings by having available early advice is significant. It also has positive benefits for the families themselves as it gives them time to reflect on what they are doing, reduces the risk of breakdowns due to misunderstanding and makes clear that everybody's positions and concerns have been fully investigated.

The Court considered these issues very carefully in the case of *re P-S (Children) [2018] EWCA Civ 1457* this gave clear guidance as to the importance of joining kinship carers to proceedings so that they were represented at final hearing it has to be said that despite that very practical guidance this is still only happening in the minority of cases and the kinship carer has no way of pushing the issue even if they wish to be heard because they cannot access legal advice.

The advantages therefore of opening up public funding and making it available at a higher fixed fee rate under Legal Help advice and assistance is potentially enormous for families and for avoiding delay and then having a more positive approach to the granting of representation for the kinship carers when it is needed is a way forward that offers nothing but benefits.

Whilst I appreciate this is in line with other submissions you will have received, I hope one further voice will assist your enquires into this issue.

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