PARLIAMENTARY TASKFORCE ON KINSHIP CARE

REQUEST FOR WRITTEN EVIDENCE

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).
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)?**

**Lack of Early Identification by Parents of Suitable Person/s**

Family Member Orders are somewhat positioned within the middle ground of care proceedings in spite of the Public Law Outline (PLO) and the tremendous work that is undertaken to assess the possibility of reaching an agreement with the family about what needs to happen to protect a child from harm to avoid court proceedings. A PLO has significant repercussions for a parent as they might lose their children. They are being asked at a very early stage who is close to the family and who they believe might be able to care for their children. In reality however, at such a formative phase, most parents never really believe their children will be removed from then. In consequence they often don’t (or won’t) say who could be a suitable person to care for them.

**Time Afforded to Carer to Consider Acceptance of an SGO Role**

In a process for adoption of foster care, the carers have a lot more time to think carefully about undertaking the role and what this really means for them. Carers will often have gone through years of their own infertility or obstacles; they will have undertaken research about being carers, undergone assessments and attended training courses. In essence, they will have been through a long process of consideration including the impact of caring on their lives and those close to them. The whole process can take 18 months to 2 years even. In a Special Guardianship Order (SGO) situation, the timeframe is reduced to around 8-10 weeks. This does not give individuals the time to think about the impact upon them and really understand the commitment involved and potential areas of concern.

In a lot of cases, the individuals concerned do not have a long, established relationship with the children in question. The children concerned (in the main) have been through difficult and negative experiences with resulting impacts on
their behaviour and psychological health; they are by nature more demanding to look after because of their experiences and there is the added complication layered on top around family politics and established connections to the parents of the child. It is therefore significantly more complicated then adoption in that regard where ties are all but cut. Problems arise for example around contact; what happens at a family wedding or birthday occasion for example? The timeframe restricts family members ability to properly digest the full extent of what they are being asked to undertake and the difficulties this may bring.

**Unregulated Foster Carers Due to Criteria Variance**

A number of courts are quite wary of Special Guardianship Orders due to some historic high-profile failings. Some judges want the orders to be tested out first. The courts are first making care orders and placing with foster carers (often a person identified for a future SGO) forcing a local authority to apply to have the care order revoked at the point of an SGO (with resulting cost implications).

Where a child is made the subject of a care order prior to the establishment of a SGO, it is noted that frequently, individuals who would meet the criteria for a SGO do not meet the criteria as a foster carer due to age or health (notably in regard to grandparents). Some criteria which stops qualification of a foster carer often arises once the child has been placed for a while in that way; this might be due to a summary criminal record coming to light for example. The fostering standard is far higher than then an SGO. Often a care order is made, and a child placed. There is then 16 weeks to make assessments at which point it comes to light the carer is not eligible to be a foster carer, at which point they become an unlawful carer. This causes obvious complications. At the point an unregulated carer comes to light, an SGO or residency order could be made, but sometimes the carer might oppose these (see section 2 below on finances). A local authority cannot remove a child from foster care if all is going well. These children have already been removed once and destabilised. However, an unlawful carer cannot be allowed to continue, and, in some cases, there is no choice but to remove the child again.

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?**

**26 Week Timescale Pressure**

The PLO (unless emergency proceedings are required) assesses the family, sets out the changes required and if failed, leads to the issue of proceedings and assessments the cost of which is borne by the local authority (whereas in
proceedings legal aid will pick up much of this). The PLO dictates the structure of the procedure including allocations, issue of directions and then set-down for hearing by around week 18. There might be a Case Management Hearing (CMH), further directions and an Issue of Resolutions Hearing (IRH). The final hearing must be within 4 weeks of the IRH and within 26 weeks in total. Most courts are running behind on the time period between the IRH and the final hearing. The problem is that at the 18 week point when the evidence is ready, the circumstances giving rise for proceedings might have changed or an alternative carer identified. For example, a parent might have satisfied by week 18 that they have been abstinent from drinking for that period. All manner of things could have changed. The assessments then must start again which courses a delay. Further, 18 weeks is the cut off for relatives to come forward and so another relative might appear and again the process starts again.

The Courts often delay proceedings because no matter how late a family member might come forward, (it could even be the last hearing), some (not all) will require an assessment of that family member which then delays time. Of course, if there is the possibility of finding a positive carer then in the best interests of the child there is a strong argument this should take precedence over the 26-week time restriction despite the repercussions. The approach of the Courts does vary tremendously on timescales and the Courts approach can sometimes be indicative of the 26-week time restriction. Any delay over 26 weeks can be problematic. The calculation of time in cases is taken as the mean average. Any delay caused by additional or late assessment affects the average. There is a lot of pressure to be quick on assessments which are affected by timescales, resources and the co-operation of family members coming forward. This creates a pressurised climate for all parties concerned.

**Assessments and Jurisdictional Considerations**

Certain assessment can delay proceedings. DBS checks vary regionally as do medical checks and records and some potential carers do not have the documentation available to allow DBS or status checks to be made. SGO proceedings do not benefit from an appointed doctor in the same way as adoptions because the law does not prescribe for this. Medical records must be accessed and assessed if relevant.

Immigration issues also arise with frequency. Sometimes, family members are identified abroad for assessment and there is an additional complication of jurisdictional issues especially outside the EU but of course, it is unclear how Brexit will affect this in the future. In such cases there is always difficulties in accessing documentation. It can be very complicated, and matters do become adjourned with frequency impacting on the 26-week timescale.

**Finances**

It is noted the foster carers are paid in the main at a higher rate than SGO’s (the percentage can vary from 85% to 65% regionally) but that also, there are
very sound reasons for this in terms of access to training and academic qualifications for foster carers who face difference challenges to that of a SGO family carer. A difficulty arises where for urgency, a child is placed with a family member under a care order and subsequent to this, an SGO is identified. This often means a loss of financial assistance to the family member from that which they had previously been receiving and for some carers, this is problematic or unpalatable to accepting an SGO role, especially as SGO’s usually involve quite young children. This can cause complications and substantial further delays. Further, the discharge of a care order is an additional cost which is picked up by the local authority. Without an interim order the law does not fit. Before the 26-weeks imposed timescale, the hearing could just be kept open but now the pressure is beating down to complete within that time.

There are also financial concerns in relation to placements with foster carers including the statutory obligation upon a local authority toward care leavers up until the age of 25 years which do not apply to SGO’s. Retention of foster placements where an SGO has been identified creates a huge financial burden to a local authority. There are often really positive and beneficial reasons for retaining a child with a family member. An interim SGO would prevent the issue of initial foster care placements with family members destined for an SGO.

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.

No Comment

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

No Comment

b. During proceedings

No Comment

c. Post proceedings

No Comment
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?**

      Review of the 26-week timescale & consideration of trigger events to extend the period.

      And/or

      Consideration of the implementation of an interim SGO to reduce time pressure, enable detailed assessment, reduce costs and prevent unlawful carer situations.

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

      No comment

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

   Whilst an interim SGO would eliminate a number of issues highlighted here, for balance it should be noted that when you examine interim care orders, at that point many parents are still fighting intervention and are unwilling to accept their children could permanently be taken away. They may be very non-compliant. It is likely the same would occur with an interim SGO placing pressure on the carer. An SGO is a very different order to that of a care order and in many ways is very like adoption.

   There are various pieces of legislation drawn up within this field for different purposes but there is a question mark around how they all work in practice and what effect they have upon each other. SGO’s were, by design, put in place for older children but now they are being used for very young children and their parameters might not be quite fit for purpose as a result.

   **Supervision Orders**

   Supervision Orders are of limited use. The finding of significant harm threshold when made gives the power to make or extend a care order and there is a continuation of threshold in the circumstance which can be helpful. It does give a legal basis for relationship between the carer and the local authority and reinforces and supports the carer with a difficult family member to cope with. However, once a child is subject to an SGO, the relevance becomes diminished as the carer has changed from the initial assessment and there exits somewhat of an irrationality upon its reliance. It is proportionate and what is the purpose
of these orders when the required support can be captured within the SGO support plan?

**Child Arrangement Orders**

Child Arrangement Orders (CAO’s) are in the main almost forgotten about. There has been a shift away from CAOs to SGOs without any obvious proportionate consideration and application of these different orders. Case law around financial provision to the carer as with SGO’s and care orders do not apply to CAO’s. Funding is discretionary and therefore their use may not be practical. CAO’s do have benefits however; parents retain parental responsibility and have a say on matters like whether their children should be taken out of the country. This can work well for some parents and children and could enable a family working together to eventually agree to an SGO.

7) Would you be willing to be contacted by the Taskforce as part of its evidence gathering?
Yes
If yes, please provide contact details:
Helen McGrath
Head of Public Affairs
LLG
Helen@llg.org.uk

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
Email address:
Helen@llg.org.uk
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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)?**

Kinship Care is a positive solution for children who are unable to live with their parents however, we feel that the following areas need to be worked on to increase the success of these arrangements.

   a. **Lack of clarity for carers**

      The role of a kinship carer (KC) can be unclear to potential carers. The parties involved should set out clear parameters for the arrangement, whether it is formal and involves a local authority (LA), or informal and is arranged between the parent and the potential carer. The requirement for a written agreement could help with this. Such an agreement would seek clarify:

      1) who was taking financial responsibility and whether benefits are to be transferred or payments made for the carers

      2) whether it is the right thing to change the child’s school if this is a longer-term arrangement with a difficult journey.

      Even where the LAs are not involved, a template agreement could be produced (available online), which could be modified to suit that situation. This template would also work to clarify the general role of a KC, the practical implications for them (see below) and the issues that should be considered in making such arrangements.

   b. **Funding**

      Generally, money is a big issue. Questions such as how are the children being funded, can the carers access any funds allocated to the children and, more fundamentally, do they have the financial resources to care for child? The carers can often lack an understanding of the financial implications of what they are taking on and the funding options that may be available to...
them. Information on these issues should be readily available to KCs and clearly set out all of their options.

c. **Practical implications for KCs**
The practical day-to-day implications for KCs are often not fully appreciated. KCs will have the full-time responsibility for the child, whether this is a permanent or temporary arrangement. The shift from the previous relationship the child has with the carer can be an abrupt and dramatic one, and the parameters of this new role should be made clearer and information made more readily available to KCs. The role is a parental one, where the wellbeing and protection of the child shifts to the KC and decisions such as education and medical treatment fall to the KCs. We suggest that support packages are provided to KCs that clearly define the role, set out its parameters and lay out the support options for KCs. Additional information should also be provided, including but not limited to, the financial implications and funding options available, issues of safeguarding and the support available to them through the LAs or elsewhere. Therapeutic support should also be provided for both the parties involved in these arrangements and any support should be offered on an ongoing basis. This information should be available online. The role of a KC is not dissimilar from foster care arrangements, therefore, these support packages could be modelled on those offered to foster carers and, where the LAs are involved, undertaken by the foster care department with KCs having their own social worker.

d. **Safeguarding issues**
In situations where these relationships are more complex and volatile, safeguarding issues can become prominent. The KCs will have to manage the parents’ expectation of having a role in their child’s life and decide whether it is in the best interests of the child to permit this. This again comes back to providing clarity around the role of KC and the practical implications. Support and strategies as to how this can be managed should be provided, particularly on what to do should the child’s physical and emotional harm become impacted. The lack of education and information on managing this relationship are detrimental to the arrangement and, where it is not managed appropriately, can lead to the child being removed from the KC later-on.

e. **The relationship between parents, the children and the KCs**
Where an ongoing relationship with the parent(s) is considered appropriate (either by the LA or KC themselves), it can be difficult for the KC to navigate. Aside from safeguarding issues, the extent of the contact permitted can be a difficult one to answer and where the parents and the KCs disagree about this, the stability of the arrangement can be profoundly affected. Where the relationship is limited, considerations as to the information provided to parents, the frequency of contact between the child and the parent, the format of such contact and whether this is supervised, should be made. Moreover,
the extent to which the parent can contribute to day-to-day decisions about the child also need to be made. Again, information and support in making such decisions and managing this relationship should be provided.

f. **Role of LAs**

Where the LAs are involved in these arrangements, the question arises as to the extent of this involvement. The responsibilities of the LAs in helping the KC understand their role should be made clear, as should the long-term support offered for KCs in carrying this out. Furthermore, where the LA are undertaking viability assessments of potential KC arrangements, the assessments should be standardised and made more robust. Emphasis should be put on the importance of any pre-proceedings work undertaken and how this can contribute to any assessments made regarding potential KC arrangements.

g. **Litigation around Kinship Care**

Where there are conflicts around implementing KC arrangements, there are not enough guidelines, particularly regarding the following situations:

1) What is the process for potential KCs to apply for these arrangements?
2) Where there are multiple parties applying to become KCs, how can this be decided? What options are available in resolving these disputes? Should one applicant have priority over the other?
3) Where the parent disputes the on-going role permitted by the KC or where they disagree with any arrangements, what are the options to resolve this?

h. **Legal aid**

Where necessary, is legal aid available for the parties involved? As with any dispute relating to the care of children, legal advice should be sought and, where appropriate, legal action should be taken. Additionally, given the PLO, the earlier legal advice is acquired by prospective carers, the better. However, parties to any dispute may not, necessarily, have the funds available and will require legal aid. Their ability to apply for this should be made clear, along with the process for applying. As this forms part of care proceedings, it seems logical that legal aid should be provided, and perhaps this should be considered by the taskforce. Access to proper legal advice and support is vital in reaching an outcome is in the best interests of the child.

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?

a. There is often a lack of consistent approaches to the information needed from the parties involved. This is compounded by the unrealistic timescales regarding what is needed and by when

b. Kinship arrangements can often involve conflicts for those caring for the child. In such situations, the parties involved may find it difficult to put the best interests of the child above the loyalties to existing relationships. For example: grandparents can struggle to reconcile putting the child before their son or daughter. This could also give rise to parents having contact with the children where it is inappropriate, or even unsafe for the children

c. The funding issue (mentioned above) can sometimes mean that perfectly suitable arrangements are not financially viable for the KCs. This can lead to them falling through.

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.

a. The Family Rights Group support the use of specialist kinship teams in local authorities. This works by providing specialist workers who can focus on assessments and support plans without the distraction of being the child’s social worker too. They have the skills and knowledge to look at whether carers/prospective carers can prioritise the needs of a child before existing family relationships and whether an emotional response is a realistic response, capable of meeting the needs of the child long term.

b. Family Group Conferences are forums to help families find a way to keep children in families if they are unable to live with their parents. These conferences are chaired by an independent person but they help the families to feel empowered to make decisions as to how to meet the needs of the child. Although social workers will set out their concerns at the beginning, the process and discussion is led by the families and the children are often present. This can be a constructive way to help parties to the conferences be more accepting of the decision reached as they can feel they have been involved. It is also a good place for social workers to set out the role and responsibilities of a kinship carer so that they can be sure they understand it before undertaking it.
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

There is a lack of clarity regarding working with parents who do not give consent to the involvement of other family members in pre-proceedings. The following questions arise from this:
- Is a child protection plan a good enough basis for overriding lack of consent?
- Do parents and local authorities understand that the lack of consent for the involvement of family members may not be a proper basis for a pre-proceedings process?
- We do not necessarily want to issue even more proceedings, so perhaps there is a need to be clearer that the involvement of family members just needs to happen?


b. During proceedings

There is statutory guidance on care planning when a child is looked after but not if they are living with a family member, such as under a CAO, therefore any use of Family Group Conferences is not subject to any specific guidance. However, if the plan is for Special Guardianship or adoption, there is a formal process of assessment and support planning. A child subject to a CAO would be considered a Child in Need. There is guidance generally for assessments of children in need in working together (2018) but no specific guidance for the assessment and support planning for a CAO.

c. Post proceedings

Specialist kinship teams in local authorities provide effective support for SGOs if this looks like post adoption support, however support of children in need with CAOs and with SOs do not have statutory guidance and therefore lack a consistent framework. Some local authorities provide Independent Reviewing Officers to review child in need plans. This would be a good basis for a mandatory approach and could perhaps be extended or used as the basis for other post-proceeding support.
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?
   In addition to the recommendations made earlier, a standardisation of private fostering welfare visits and assessments or support plans should be considered. The statutory guidance has not been updated since 2005 and it should be consistent with statutory child in need assessments, which in turn should be consistent with special guardianship assessments as they are all intended to be permanent. The statutory guidance on family and friends care is very good but it has been archived. Again, we recommend that this guidance should be refreshed and made consistent with all of the above.

b. Enable more children to be effectively supported and thrive in kinship
   As above

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

   We have made all of our points and recommendations above.

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

   Yes

   If yes, please provide contact details:

   Dorothy Simon Legal Services Manager – Children and Education (for Essex County Council) and Assistant Director (Legal Services) (for Southend-on-Sea Borough Council) Tel: 03330 139622 M: 07881 310775 email: dorothy.simon@essex.gov.uk
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

Email address: as above.