

For family or friends who step up to raise a child.

Kinship

Submission to the Law Commission's consultation on kinship care (consultation paper)

October 2026

Introduction

Kinship carers are family or friends who step up, often during an unexpected crisis, to care for a child when their parents aren't able to. This may be because the parent has died, is unwell, has gone to prison, is experiencing problems with drugs and alcohol, or are neglectful or abusive. Kinship carers are usually grandparents, aunts or uncles, brothers or sisters, a stepparent, stepbrother or stepsister, or someone who isn't related but knows the child well. Whatever their relationship to the child, in that moment a commitment is made. To bring love and hope to a child who has experienced trauma, no matter what.

It is estimated there are more than 141,000 children living in kinship care in England and Wales – 3 times the number in unrelated foster care.[1]

To inform our response, we brought together groups of kinship carers through Kinship's participation and involvement network and peer support group leaders network, in addition to our #ValueOurLove campaign steering group and organisational advisory group, for online discussion sessions. We also held informal conversations with researchers and practitioners with specific expertise in kinship care and the family justice system. We're grateful to all of those who kindly shared their time and expertise to support this submission.

We would strongly recommend reading of our responses to questions 67 (p31/32) and 70 (p33/34) first as they set out the overarching arguments and considerations which have informed our responses to the other consultation questions.

[1] Office for National Statistics (ONS) (2023) Kinship care in England and Wales: Census 2021 Released 26 September 2023, ONS website, article.

KEY CONCEPTS AND DEFINITIONS IN KINSHIP CARE

1

We provisionally propose to adopt the definition of kinship care contained in section 22I of the Children Act 1989 (and set out at paragraph 3.48 of this consultation paper) for the purposes of our proposed kinship care order and kinship parental responsibility agreements.

Do consultees agree?

Yes.

2

We ask for consultees' views on whether a child in a kinship care arrangement in England and Wales, as defined in this consultation paper, should automatically come within the category of a "child in need".

The Commission rightly outlines how the provision of financial and other support for kinship families often depends on the type of arrangement they have rather than the child's needs, and notes this creates perverse incentives in the system which act against the best interests of the child and their family.

This includes the risk that certain orders are "pursued based on the level of support provided, rather than the appropriateness of that order" which the Commission considers "to be incompatible with a modern and fair system" and "difficult to defend as many children in kinship care share similar concerns and needs, and should therefore have access to the same level of support based on their needs".

Given the scope of the Commission's review (which explicitly excludes consideration of support and resource allocation), we welcome the Commission sharing this option for reform and appreciate the team's real consideration of where changes to the legal framework could help to ameliorate the impacts on families of some of the system's most egregious dysfunction.

However, this example serves to illustrate the limitations of the review's scope. The legal lever proposed here will not address the core feature of a system defined by differential support; the solution simply does not match the problem diagnosis. A decision about whether or not to bring all children in kinship care into the category of a 'child in need' feels somewhat inconsequential if eligibility for support remains largely dependent on the formalisation of an arrangement in the family court and whether or not the child was previously looked after.

As a policy instrument this is knowingly blunt; it is a legal 'patch' which attempts to improve access to support but in doing so pushes families into systems which weren't designed for them. It undeniably sits at tension with the original intent of the section 17 general duty. We would urge the government to prioritise building a policy framework designed around the specific needs, strengths and experiences of kinship families which can deliver support tailored to their circumstances.

Despite this, at present, we would support such a proposal if made by the Law Commission. This comes from a place of pragmatism. Even with its significant shortcomings, bringing all kinship children under the 'child in need' status could help to protect children in kinship care and their kinship carers against some of the most dysfunctional aspects of the system. It would provide a guaranteed route to an assessment of needs and – however unlikely – the provision of support for a cohort of families who we know experience daily challenges which risk children's wellbeing, stability and development.

This change could act as a potential legal key to unlocking investment in local authority or commissioned support, without which a local authority might otherwise struggle to justify given the high thresholds associated with assessment or the provision of support. High-performing local authorities with strong expertise in supporting kinship families may already feel comfortable utilising the existing duty and legislative framework to support families as needed, but not all kinship families benefit from relationships with such teams and might see greater benefit from a statutory lever – albeit a crude one.

Crucially, it increases likelihood that informal kinship families – those with the fewest rights to access support – might be able to secure tangible help from the local authority. This is important given that family network support packages (FNSPs) being rolled out through Families First Partnership programme reforms and within Kinship Zones are unlikely to be the most appropriate mechanism to secure financial, practical or emotional support for many informal kinship families (where a relative or friend is the child's primary caregiver).

There are several risks and challenges associated with this proposal. We recognise that some kinship families may find the status stigmatising and might worry about voicing difficulties which they believe will be seen by children's services as failures in their caregiving. Given high levels of mistrust and fractured relationships between families and children's services, assessment from the local authority could be seen as a threat of child protection intervention rather than an offer of meaningful help.

As is the case with disabled children, not all kinship children will require or benefit from an assessment or support where they don't have health or developmental criteria that require local authority intervention. It's possible that an automatic status could make it easier for children's services to dismiss rather than comprehensively explore individual family needs. Local authorities are also likely to feel nervous about the resourcing of such a change given the size of the cohort to which this would extend and the potential for what some might see as unnecessary 'interference' in families' lives.

However, alongside the new kinship local offer duty and school census marker, it could also improve recognition of the needs and experiences of this cohort of children and how they compare with those in formalised kinship arrangements and to children in the care system. It could improve our understanding of the characteristics of informal kinship families and how to develop policy and services in the future more attuned to their unique circumstances.

We also shouldn't indiscriminately assume these families would reject all connection to statutory services; with an actual offer of potential help, it might also provide an

opportunity to develop stronger relationships between often-invisible struggling families and the state. The voluntary sector is well-placed to support with this too through the provision of independent advice, training and support services which help to strengthen local relationships and capacity, such as our Kinship Connected navigator programme.

Ultimately, in an underdeveloped policy and practice landscape where too many families continue to struggle to access support, increasing the range of potential routes to support – albeit imperfectly – whilst we build a future system fit for kinship care, is difficult to reject.

SPECIAL GUARDIANSHIP ORDERS

3

We provisionally propose that it should be possible for a court to make an interim special guardianship order where special guardianship has been raised in the course of public law care proceedings.

Do consultees agree?

Yes.

We support changes to the legal framework which remove barriers to children being placed with family members and friends at the earliest opportunity. The risk to a child's long-term wellbeing of any delay to this – and the impacts of living in unrelated foster care or residential care for any period prior to being placed within their family network – should not be underestimated.

We recognise that the ability for the court to grant an interim special guardianship order may support with this, particularly in situations where it isn't appropriate – for whatever reason – to approve a kinship carer under fostering regulations or grant a child arrangements order on an interim basis whilst proceedings are ongoing.

An interim special guardianship order could also help with 'testing out' the viability of a potential special guardianship order, particularly where there isn't as strong an existing relationship between the child and their prospective kinship carer. It may support higher-quality assessments and more robust consideration of support for special guardianship families, particularly where prospective kinship carers are identified later in proceedings and this might otherwise be rushed.

However, as a "tool in the judicial armoury", this again represents at least in part a fairly crude corrective to the inflexibility and unsuitability of the existing fostering regulations for prospective kinship carers; it is therefore welcome the Law Commission also recommends reform to the regulatory framework here.

The option of an interim SGO should also never function as a means to bypass the assessment and approval of family and friends as kinship foster carers, including under regulation 24, and the placing or accommodating of a child under an interim care order or s20 arrangement respectively, given the significance of any time spent 'looked after' in local authority care on a kinship family's long-term eligibility for support and the absence

of guaranteed financial and other support for kinship carers outside of this arrangement. If this perverse incentive in the system was ended by the provision of comprehensive support outside of kinship foster care, this would be less of a concern.

There is also a risk the addition of an interim SGO has the opposite effect to intended and acts to make the system even more complicated, which is why we support the Law Commission's preferred reform route through the introduction of a kinship care order (KCO), including an interim variant. The extent to which an interim SGO is likely to be used or fills a real need in the system is debatable, given the option for an interim child arrangements order is available too and the level of local authority assessment which might be required for court to have the confidence to make an interim SGO would likely be relatively significant anyway.

4

We ask for consultees' views on whether, and if so how, the existing requirements for the special guardianship assessment set out in the Schedules to the Special Guardianship Regulations in England and Wales respectively, should be modified to address the specific nature of a kinship special guardian.

Please share your views below.

No response.

5

We provisionally propose that when making a special guardianship order:

(1) the court should be required to consider the potential for the reunification of the child to the parents' care; and

(2) the default should remain for the order to be made for the duration of the child's minority.

Do consultees agree?

No.

This proposal relies upon an overly simplistic and binary view of a child being cared for either by a kinship carer or by their parent(s) and the ability of the court at the point of making the order to determine when and in what scenarios that will be in the child's long-term interests.

Instead of a linear narrative of parental dysfunction followed by recovery, the circumstances which lead children to enter kinship care (e.g. substance misuse, parental mental health difficulties) often lead to more cyclical and unpredictable journeys. The idea that the court at this point can meaningfully consider and begin to plan for the potential for parents to regain a primary caregiving role is optimistic at best.

We reject that there is any "merit in diluting the permanent nature of an SGO in the kinship care context". It is absolutely right that the court consider the positive involvement of parents in a child's life (and we outline our support for proposals 7 and 39 below), but the framing as "potential for reunification" risks seriously undermining the intention of a special guardianship order and the stability which children need to heal and thrive. If full reunification to the care of parents is a realistic option at the point of the making of the order, the question should instead be whether an SGO is the right legal option to pursue.

This proposal creates a very real risk of a deterrent effect. In our engagement with kinship carers to support our response, we heard very strongly that many would not have felt able to take on the role without the long-term security afforded by special guardianship and the protection they felt this gave both them and the child(ren). The complexity of the dynamics of the family relationships at the heart of many kinship care situations cannot be overstated.

At the very same time, the proposal may also have the opposite effect to its intention. It *also* risks undermining the potential for supported and positive reunification with parents in the event that they are able to get the support they need and can demonstrate a significant change in circumstances and parenting capacity beyond the expectations at the point of the order being made. Research has highlighted the extent to which parents involved in care proceedings concerning their babies are typically young, have childhood experience of children's social care services themselves, and have learning disabilities or difficulties identified at a very late stage in proceedings. Making reliable judgements about the future is problematic in this context.

The enhanced parental responsibility granted to a special guardian also empowers them to make decisions as the child's primary caregiver about what level of 'reunification' is in the child's best interests; it does not preclude this but instead enables that decision to be made and managed by the kinship carer themselves. Better information and training for special guardians about their rights, and enhanced support planning alongside kinship carers, children and their parents to consider and manage this as a process is a more appropriate means to improve the chances for successful reunification, where safe to do so.

Crucially, this instead considers 'reunification' as a spectrum rather than a fixed destination or outcome, with meaningful options for increased parental contact and care in different forms, including shared care arrangements. This will not always require or benefit from an additional layer of judicial consideration. Where circumstances do significantly shift, the option of discharging the order remains.

Ultimately, the consideration of 'permanence' within the context of kinship care described in the consultation paper as the justification for this proposal is problematic. It suggests that "the traditional approach to permanence tends to view any current inability of the parents to look after the child as lasting indefinitely. The tension with reunification is clear, and we think that it is preferable to view permanence through the lens of the welfare of the child, as opposed to an irreversible decision for the child's minority".

However, this 'traditional' view of permanence isn't and shouldn't be how permanence is understood in the kinship care context. We reject the simplistic tension articulated here

between permanence and reunification, and this should not be the premise on which changes to the legal framework are made. Special guardianship reflects one *type* of permanence for children.

Indeed, care planning guidance and kinship care statutory guidance describe permanence as "the framework of emotional, physical and legal conditions that gives a child a sense of security, continuity, commitment and identity" and explicitly says that "for some children, permanence is achieved through a successful return to their family, where it has been possible to address the factors which led to the child becoming looked after" but that various kinship care arrangements can also provide an "important alternative route to permanence".

6

We ask for consultees' views on when a court makes a special guardianship order:

(1) if the default duration (until the child reaches 18) remains, it should be possible for the court to attach a review date; and

(2) if a review is included, whether this should be after a defined period of time, or when certain conditions are met.

No.

See our response above to question 5 which explores why disrupting the intention of special guardianship orders through consideration of reunification or review dates at the point of making the order isn't appropriate. A review date set by and considered in court risks threatening the stability of the arrangement, increasing a deterrent effect, and undermines the potentially valuable role of the local authority in high-quality support planning.

7

We provisionally propose that the UK Government consider revising the guidance on special guardianship support plans to emphasise the importance for local authorities to consider what support is needed to ensure contact between a child in kinship care under a special guardianship order, and their parents.

Do consultees agree?

Yes.

Our research has highlighted that more than 3 in 5 kinship carers report their children experiencing difficulties with the emotional impact of contact and high levels of dissatisfaction with contact arrangements, whilst only 1 in 8 families received local authority support to manage contact.

Too many kinship carers are left completely alone to manage contact and the complex impacts this has for them and their children, often unsustainably. However, we also recognise that many kinship carers believe the autonomy provided by special

guardianship to determine contact arrangements in the best interests of their child to be very positive.

Revised guidance should consider our research on understanding kinship carer networks to inform targeted support alongside the University of Exeter and guidance for professionals on making a support plan, additionally alongside Coram BAAF. This sets out what a high-quality support plan for kinship care should ask and include around family relationships and contact, such as:

- what contact arrangements are in place, and how are they working for the child and the kinship carer?
- what support is available if contact or wider family relationships become difficult or contested?
- what mediation, or practical support could help manage family relationships or conflict?

8

We provisionally propose that the court should, when making a special guardianship order, be required to consider whether the best interests of the child require an order to be made under section 91(14) of the Children Act 1989, requiring any person other than the special guardian to obtain permission before being able to apply for any order under section 8 of the Children Act 1989. Do consultees agree?

Yes.

Many kinship carers tell us about the devastating impacts that repeated legal challenge from parents has for them and the children they are caring for – financially, practically and emotionally – and the destabilising effect this can have for their own caregiving, as well as the child's safe and positive relationships with parents and others.

The discrepancy in access to legal aid compounds this and leaves too may kinship carers in vulnerable situations with little support from the local authority or judicial system. It also acts as a deterrent to some kinship carers pursuing a legal order in the family court, even where this would otherwise be in the best interests of the child. Requiring the court to consider the making of an order under section 91(14) could support greater stability for children and enable more families to have the kinship arrangement that is right for them.

9

We provisionally propose that a local authority should be under a duty to investigate whether the child has any family members abroad who may be suitable prospective special guardians. Do consultees agree?

No response.

PRIVATE LAW ORDERS IN KINSHIP CARE: SECTION 8 OF THE CHILDREN ACT 1989

10

We provisionally propose that where a child is living with a kinship carer as defined in section 22I of the Children Act 1989 (but where the child has not been living with the kinship carer for at least one year immediately before the application, such that section 10(5B) of the Children Act 1989 is not satisfied), the kinship carer be eligible to apply for a child arrangements order without first requiring permission from the court to do so. Do consultees agree?

Yes.

11

We provisionally propose that when making a "live with" child arrangements order in favour of a kinship carer, the court should be required to consider the potential for reunification of the child with their parents when deciding on the duration of the order. Do consultees agree?

No.

See our response to Q5. Whilst there is to some extent a stronger rationale for the court's consideration of options which extend to reunification for a child arrangements order, this remains inappropriate given the typical use of such orders and the difficulties outlined earlier.

12

We provisionally propose that the court should, when making a "live with" child arrangements order in favour of a kinship carer, be required to consider whether the best interests of the child require an order to be made under section 91(14) of the Children Act 1989, requiring any person other than the kinship carer to obtain permission before being able to apply for any order under section 8 of the Children Act 1989 (a child arrangements order, prohibited steps order, or specific issue order). Do consultees agree?

Yes.

See our response to question 8.

13

We ask consultees who are, or have been, kinship carers holding a "live with" child arrangements order:

(1) to share their experience on whether when making the order, the court also imposed a requirement on the parents of the child to obtain permission before making any future application; and

(2) if no requirement for permission was made, to share their views on whether they think it would have been helpful for such a requirement to have been included.

No response.

14

We ask for consultees' views on whether in all applications for a child arrangements "live with" order where the applicant is (or will be) a kinship carer, a welfare report under section 7 of the Children Act 1989 should form a mandatory part of the Child Impact Report.

In a family court operating under the Child Focused Courts model, a Child Impact Report (CIR) replaces the existing section 7 report and Practice Direction suggests there shouldn't be a need to direct the preparation of a separate report.

However, we agree with the intention behind this proposal – that is, to ensure the court has sufficient information, analysis and recommendation to determine if the 'live with' CAO would be in the best interests of the child. Where Child Focused Courts are not in operation, a standard section 7 report should be expected.

Existing use of section 7 reports is relatively limited despite evidence of often-significant safeguarding concerns playing out for children and families where a CAO is being pursued in private family law proceedings, suggesting children's needs and experiences are often similar to those in public law proceedings. It is therefore vital that this is sufficiently explored and scrutinised by the court, that the voice of the child is heard, and that potential kinship carers understand the long-term implications for their family's eligibility for support when pursuing an order in private proceedings.

15

We ask for consultees' views on whether when considering a section 8 order application by a kinship carer there are any factors which a Child Impact Report, or a welfare report under section 7 of the Children Act 1989 (if mandatory) should be required to investigate, which are not already contained within the section 1(3) of the Children Act 1989 welfare checklist.

For kinship care situations, a standard section 7 welfare report or Child Impact Report for family courts operating under the Child Focused Court model should include specific exploration of ongoing relationships with the child's parents, siblings and members of the wider family network and the support needed for all involved to manage contact safely and positively.

KINSHIP FOSTER CARE

16

The current fostering regulations in England apply equally to prospective kinship foster carers and unrelated foster carers. In relation to assessment criteria, review and visits procedures, and other post-approval requirements, we ask consultees for their views on:

(1) whether there is merit in introducing regulations that are adapted specifically to kinship foster care, as distinct from unrelated foster care; and

(2) if so, what adaptations would be appropriate?

Yes.

We look forward to exploring this question further with kinship carers, but in the interim would draw the Commission's attention to our submission to the Department for Education's consultation earlier this year on proposed reforms to the use of fostering panels which outlines some suggestions for how best a separate regulatory framework for kinship foster care could be delivered. This includes:

- introducing the use of specialist kinship foster care panels and accompanying best practice guidance on their delivery.
- introducing a requirement for specific training on kinship care and the experiences and circumstances of kinship families for panel members and for kinship foster care panels to include members with relevant lived experience.
- allowing additional flexibility in regulation 24 timescales in situations where there are parallel ongoing court proceedings and/or the requirement for full fostering panel recommendation where there is evidence of suitability following a period under temporary approval.

Any adapted set of standards should start from a strengths-based principle that the existing relationships and connection through a child's family network are a positive factor in supporting a child's stability and wellbeing, rather than a source of inherent risk to be managed. They should be designed to recognise and support the unique needs, strengths and experiences of kinship families. They should also consider other international examples (e.g. kin-specific licensing standards from the US).

17

We provisionally propose that local authorities should be required to use a prescribed kinship foster care assessment form when assessing kinship foster carers. Do consultees agree?

Yes.

18

We provisionally propose that the statutory requirement for visits and reviews in England should be varied as follows:

(1) local authority visits to children in kinship foster care placements should be conducted at least every 6 months, rather than every 3 months; and

(2) subsequent local authority reviews of children in kinship foster care placements should be conducted at least every 12 months, rather than every 6 months.

Do consultees agree?

No.

Although we recognise the intention behind the proposal – to avoid unwanted and disproportionate intrusion into kinship foster families' lives where there are no ongoing concerns – this could lead to children and kinship cares missing out on vital and timely support, particularly in the context of the current regulatory system and the use of kinship foster care.

Although the requirement establishes a minimum to be adjusted depending on the circumstances of families, it is important not to unintentionally set an expectation that kinship foster care is any less demanding for children or their kinship carers. Fewer, less frequent visits and reviews risks families not receiving the support they need before a problem escalates.

If a child's care planning determines they are best looked after in kinship foster care for an extended period of time rather than a different form of kinship care outside of the care system, there will likely be good reasons for this. Practitioners have told us clearly that the decision for a child to remain in kinship foster care is often made precisely because of a family's vulnerabilities and the level of intensive support they need. Even with flexibility to retain a greater frequency when needed, the statutory signal this would send to practice could be damaging to children's safeguarding and wellbeing.

We respect the experiences of the kinship foster carers and their children we have heard from who find such visits and reviews to be unwelcome and disruptive to their lives, but ultimately believe the benefit gained by this relaxation of requirements for them is disproportionate to the risk it presents for others. Improved support and social work practice based on trusted relationships, alongside wider reforms to the regulatory system, would better address this concern.

INFORMAL AND PRIVATE FOSTERING KINSHIP CARE ARRANGEMENTS

19

We provisionally propose that it should be possible for a child's parents to enter into an agreement with a child's kinship carer(s) to share parental responsibility for a child. Do consultees agree?

Yes.

We recognise in the Commission's analysis the difficulties which can be caused by the absence of parental responsibility (PR) for some informal kinship carers, particularly in engaging with health, education and other services. As described by one kinship carer: "We're just seen as glorified babysitters without parental responsibility."

It may also be beneficial for parental responsibility to be secured outside of the family court given that – even in largely straightforward circumstances – securing a legal order which grants PR can often be an unpleasant, costly and challenging experience for families.

Given the additional proposals made below around the requirement for consent from parents, the process for entering into such an agreement, and realistically the fairly limited cohort this mechanism would be appropriate for, we tentatively support this proposal at present but raise several questions and concerns for the Commission to consider in the next phase of its project.

Our key concern would be the potential for abuse: to what extent a kinship PRA might be encouraged by children's services – tacitly or explicitly – as a means to divert families away from more significant child welfare intervention with the promise of lesser state interference but without sufficient understanding from kinship carers of the impact on their family's eligibility for support. We know this happens currently with kinship carers who feel pushed into private law proceedings following either deliberate encouragement or an absence of information and guidance which helps them make the right decision.

Even with the additional requirement for parental consent, lessons from the use of s20 voluntary arrangements demonstrate how poor or misleading information, concerns about the escalation of child welfare intervention, a lack of understanding about what decisions can be made outside of the family court, and any sense of pressure a professional might even unintentionally risk a kinship PRA being used in an unsuitable circumstance.

It would be desirable that both the parent and the prospective kinship carer receive independent legal advice prior to any kinship PRA being formalised so they clearly understand what this would – and would not – involve and deliver.

To what extent is this proposal masking an issue with the agility of the court to grant – most likely in these cases – a child arrangements order for a fixed period of time, with the additional scrutiny this would provide alongside the opportunity for the child's voice to be heard? The granting of additional parental responsibility is a significant interference with a child's rights. If the proposal outlined in question 10 goes ahead alongside other improvements to the delivery of the family court, the need for a kinship PRA arguably becomes less clear.

Finally, for many informal kinship families, the key challenges around poor support remain largely disconnected to the absence of parental responsibility. For those who might most benefit from support which could be aligned to any status secured through a kinship PRA, they are also those most likely to be ineligible given the inability of a parent to consent (e.g. due to their absence or because they lack the capacity to do so).

Conversely, those most likely to enter into a kinship PRA may be those who will benefit *least* from what it might deliver.

The real challenges some informal kinship families face around significant non-emergency medical treatment or school admissions arise when consent *isn't* there and accessing this is very difficult. This isn't a reason to reject the proposal, but we make the point to emphasise the need for government to ensure any reforms to support for kinship families does not become conditional on the presence of parental responsibility; this will still remain inaccessible and inappropriate for many families.

20

We provisionally propose that a kinship parental responsibility agreement should require the consent of all parents with parental responsibility, and of any other individuals who hold parental responsibility for the child, before the agreement is made. Do consultees agree?

Yes.

However, please see answer to question 19 above.

21

We provisionally propose that, where parental responsibility for a child is shared using a kinship parental responsibility agreement, it should not be possible for the agreement to provide for either the parents or kinship carer to exercise enhanced parental responsibility. By enhanced parental responsibility, we mean parental responsibility that can be exercised by one of its holders to the exclusion of any other holders. Do consultees agree?

Yes.

22

We provisionally propose that:

(1) only kinship carers who fall within both the definition of kinship carer in section 22I of the Children Act 1989, and the definition of relative in section 105 of the Children Act 1989 (that is "a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent") should be able to enter into a kinship parental responsibility agreement;

(2) it should be possible for a prospective carer under a kinship parental responsibility agreement to satisfy the definition in section 22I of the Act based on caring for a child at a date after the kinship parental responsibility agreement is made, with this date to be specified in the agreement;

(3) the number of kinship carers with whom parental responsibility can be shared should be limited to two in each agreement; and

(4) it should only be possible for there to be one kinship parental responsibility agreement with respect to a child at any one time.

Do consultees agree?

Yes.

23

We provisionally propose that a kinship parental responsibility agreement should:

(1) take effect on the later of the date on which it is received and recorded by the Central Family Court and any commencement date set out in the agreement;

(2) be brought to an end by:

> **(a) the expiry of the period set out in the agreement;**
>
> **(b) an order of the court made on the application of any person who has parental responsibility for the child, removing parental responsibility from the person to whom it was provided by the agreement;**
>
> **(c) an order of the court made on the application of the child with permission of the court, removing parental responsibility from the person to whom it was provided by the agreement, such permission only to be granted where the court is satisfied that the child has sufficient understanding to make the application; or**
>
> **(d) the child reaching the age of 18; and**

(3) be for such period as the parties specify subject to a minimum duration of one year.

Do consultees agree?

No.

Whilst recognising the need for a minimum duration beyond a few weeks, the potential circumstances described in the consultation paper for where a kinship PRA might be used (e.g. a parent undergoing a period of intense medical treatment) don't necessarily align with a one-year minimum. This also sits awkwardly when compared to the absence of any minimum duration proposed for a kinship care order which would requires the involvement of the court and involves much greater time and scrutiny to establish.

24

We provisionally propose the following process for the making of a kinship parental responsibility agreement:

(1) the parents and the kinship carer must sign the document before a justice of the peace (a magistrate), a justices' clerk, an assistant to a justices' clerk, or a court official who is authorised by the judge to administer oaths;

(2) the parents and the kinship carer must provide evidence of their identity;

(3) the parents must provide evidence that they have parental responsibility for the child;

(4) the kinship carer must provide evidence that they are within the category of people entitled to apply for a kinship parental responsibility agreement;

(5) the application form must require the parties to list all those who already have parental responsibility for the child, thus ensuring that there is no pre-existing kinship parental responsibility agreement with respect to the same child;

(6) the kinship parental responsibility agreement and the supporting evidence must be sent to the Central Family Court, with the agreement to be recorded and sealed by the Court; and

(7) copies of the sealed kinship parental responsibility agreement must be sent by the Court to the parents and kinship carer(s).

Do consultees agree?

Yes.

25

Section 66 of the Children Act 1989, uses the terms "a privately fostered child" and "to foster a child privately". We have been told that some stakeholders find this language confusing, because, for example, of the potential for confusion with children being looked after by the local authority who have been placed with foster carers. We ask for consultees' views on whether and why they find these terms confusing.

Both the use of 'private' and 'fostered' introduce potential confusion; the latter leads to conflation with children who are looked after by the local authority and placed with foster carers, and the former with private (i.e. independent) fostering agencies as opposed to local authority fostering services.

26

We ask for consultees' views on whether a child cared for by a foster carer in the child's own home, in the absence of any parent or other person with parental responsibility for that child, should fall within the definition of a privately fostered child.

No response.

27

We ask for consultees' views on whether a child who is not disabled and is aged 16 or 17 should fall within the definition of a privately fostered child, if they are living in an arrangement that would, but for their age, be classed as a private fostering arrangement.

No response.

A BESPOKE KINSHIP CARE ORDER

28

We provisionally propose that

(1) A kinship care order should be introduced; and

(2) when making a decision about whether to make, vary or discharge a kinship care order,

> **(a) the welfare of the child shall be the court's paramount consideration; and**
> **(b) the court shall be required to have particular regard to the matters contained in the "welfare checklist" in section 1(3) of the Children Act 1989.**

Do consultees agree?

Yes.

29

We provisionally propose that to apply for a kinship care order appointing them as a child's kinship guardian, an applicant must

(1) be aged 18 or over;

(2) be a kinship carer (defined as we propose in Consultation Question 1) for the child; and

(3) have provided care and support for the child in a kinship care arrangement for at least 28 days immediately preceding the application for a kinship care order.

Do consultees agree?

Yes.

However, the ability for the court to permit an application without this 28-day requirement being satisfied, either for an interim or full KCO, could be beneficial. The beginnings of kinship care arrangements often aren't linear, and a child's ability to live safely with a kinship carer under a KCO shouldn't be delayed by challenges confirming a single uninterrupted 28-days of care and support immediately preceding the application being made.

It is also crucial to recognise that the first 28 days of a kinship family's arrangement often features some of the most turbulent and challenging times and where there is often an acute need for support. If the Commission's proposal for a kinship care order is taken forward in the future, the accompanying system of support should never require an application for a KCO to be made as a condition of eligibility for key support, such as employment leave or initial financial support.

30

We provisionally propose that

(1) a relative, friend or person connected with the child who does not meet the requirements set out in Consultation Question 1 may apply for an interim kinship care order if they have obtained the permission of the court to make the application; but

(2) this should not extend to an individual who is a parent of the child in respect of whom a kinship care order is sought.

Do consultees agree?

Yes.

31

We provisionally propose that it should be possible for more than one kinship carer jointly to apply for a kinship care order appointing them as a child's kinship guardians. Do consultees agree?

Yes.

32

We provisionally propose that the court may make a kinship care order if it considers that the order should be made, even though no application for a kinship care order has been made. Do consultees agree?

Yes.

33

We provisionally propose that a kinship care order grant a kinship guardian parental responsibility for the child for the duration of their appointment. Do consultees agree?

Yes.

34

We further provisionally propose that when making a kinship care order, the court should be required to consider how, having regard to the particular circumstances of the case, parental responsibility should be exercised for the duration of the order. Do consultees agree?

Yes.

In a legal framework where a kinship care order exists as proposed, this proposal makes sense to ensure the ability of the court to determine how parental responsibility is exercised in each case.

However, we would challenge the premise on which this proposal is made in the context of whether or not to grant enhanced parental responsibility (see our response to question 35 below).

It is not desirable nor appropriate for the court to be required to "consider a 'middle ground' where parents can continue to play a role in making some decisions for the child". The court is responsible for making difficult decisions and for navigating trade-offs with significant legal, social and rights-based implications. Even if well-intentioned, any system-wide intention to adopt more complicated 'balanced' arrangements around parental responsibility risks undermining the stability which kinship care can deliver and creating significant ongoing challenges for kinship guardians, children and parents.

35

We provisionally propose that the court be able to direct as part of a kinship care order that a person with parental responsibility named in the order shall be entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child. This would mean that such a person would gain what we have referred to in this consultation paper as "enhanced parental responsibility". Do consultees agree?

Yes.

Special guardianship is commonly used, particularly following public care proceedings, to enable a child to live in kinship care for very good reasons; it delivers the security and certainty kinship carers need to fulfil their role as the child's primary caregiver and meet their everyday needs, particularly in circumstances where family relationships are strained and where parental capacity to contribute effectively to decision-making is unpredictable.

As explored above and earlier in the questions around the consideration of reunification, the court's ability to establish what might feel like reasonable expectations about the future situation is often extremely limited at the time an order is made. Patterns of dysfunction and recovery are often unpredictable; enhanced parental responsibility can help to 'future proof' and protect against the negative impacts this may have for a child as they grow.

Kinship carers with special guardianship orders place enormous value on the autonomy this arrangement allows them and take the responsibility extremely seriously; their own knowledge and expertise about the child, their family and their needs are crucial and should be respected. Indeed, the court's decision to grant enhanced parental responsibility should *not* be seen as permanently diminishing the role of the parents in a child's life. It can in fact support the very opposite; it allows a kinship guardian (or guardians) the ability to determine – with appropriate support and guidance – how and when best to enable greater involvement and decision-making alongside the child's parents as according with the best interests of the child and in response to changing circumstances.

Many kinship carers, children and parents will be best served by a kinship care order which grants a kinship carer enhanced parental responsibility in the same way special guardianship currently does, and this must remain a common outcome.

It is also vital that, in practice, prospective kinship guardians are clear on any recommendation made by Cafcass or the local authority about the level of extent of parental responsibility and the level the court is minded to award *in advance of* a court hearing. We have heard strongly from kinship carers that uncertainty around this – or other aspects of a flexible KCO (e.g. duration or extent of contact with parents) – would be a significant deterrent to them agreeing to become a kinship guardian.

36

We ask for consultees' views on whether the court's power to grant enhanced parental responsibility to a holder of parental responsibility (as envisaged in Consultation Question 35 above) in a kinship care order, should be limited to a particular category of holders of parental responsibility.

Enhanced parental responsibility should be available to kinship guardians only.

37

We further provisionally propose that the court be able to direct, as part of a kinship care order, that restrictions shall be attached to the exercise of any person's parental responsibility (including the exercise of enhanced parental responsibility). Do consultees agree?

Yes.

38

We provisionally propose that whilst a kinship care order is in force with respect to a child

(1) no person shall (a) cause the child to be known by a new surname; or (b) remove the child from the United Kingdom without either the written consent of every person who has parental responsibility for the child or the permission of the court; but

(2) it shall be possible for a person named in the kinship care order to remove the child from the United Kingdom for no longer than such a period as the court shall specify when making the kinship care order, to a maximum of three months.

Do consultees agree?

Yes.

39

We provisionally propose that when making a kinship care order, the court must

(1) consider how the relationship between the child and the parents should be managed; and

(2) set out in the kinship care order the extent to which the child is to spend time or otherwise have contact with the parents.

Do consultees agree?

1) Yes.
2) No.

The management of ongoing relationships between a child, their parents and their kinship carer is fundamental to the success of any judgement about who a child's primary caregiver should be and where the child lives. This is not an optional extra but central to the core decision about whether to grant a kinship care order, and we support greater consideration in the court about how such relationships are managed and – crucially – supported.

However, we are unconvinced that setting out the extent to which the child is to spend time or otherwise have contact with their parents in the order itself is realistic or desirable, or in the best interests of the child. As explored elsewhere, kinship family situations are often unpredictable, and circumstances can shift significantly as a child grows older. The proposal also risks undermining the ability for a kinship guardian to change arrangements in the best interests of the child when they have enhanced parental responsibility.

The ability for contact arrangements to be amended as needed to respond to changing dynamics and safeguarding and wellbeing considerations is paramount to keeping a child safe and healthy. This is best done via strong relationship-based practice through support planning rather than awkwardly fixed at one point in time by the court, with a requirement to return to court every time this is required to be amended.

On a more practical level, the 'extent' to which a child is to spend time or otherwise have contact with parents is only one piece of what determines successful contact; the quality

of this contact and the support for all – child, parent and kinship carer – to manage this is just as important.

40

Additionally, we ask for consultees' views on whether, when the court is considering whether to make a kinship care order, there should be a rebuttable presumption that the involvement of a parent (which may be direct or indirect) in a child's life will further their welfare.

Such a presumption would reflect the presumption currently contained in section 1(2A) of the Children Act 1989, and would apply unless there is evidence before the court that the parent's involvement in the child's life would put the child at risk of suffering harm, whatever the form of the involvement.

No.

Parental contact in kinship care is highly variable; it can be a protective factor for wellbeing, but can also be experienced as highly problematic and harmful. A presumption undermines the premise of a KCO's flexibility to respond to individual family circumstances and consider what involvement of a parent is in the best interests of a child.

41

We provisionally propose that where support for those involved in the kinship care arrangement has been assessed by the local authority, the final kinship care order should record the assessed level of support, and a kinship care support plan should be attached to the order. Do consultees agree?

Yes.

We strongly welcome this proposal. Currently, support plans for kinship carers are often overlooked, rushed, or too generic to really meet a family's needs.

As outlined in our research and guidance for professionals and kinship carers around support planning, a clear support plan is an important foundation for kinship care. It "benefits all kinship carers by setting out agreed support and responsibilities in writing, giving carers confidence they and their child's needs will be met, and helping prevent challenges and pressures from escalating over time."

By bringing consideration of support needs and planning closer together to the court's consideration of the order itself, this will help to ensure kinship carers have stronger rights and entitlements and ensure support is delivered when promised.

42

We ask for consultees' views on

(1) the extent to which a local authority should be required to assess the support needs of those involved in a kinship care arrangement when a kinship care order is sought; and

(2) how any such requirement might operate.

It is vital that any requirement to assess support needs extends not just to those where an order is made following care proceedings but also when made in private family law proceedings. Research across both England and Wales shows that the needs and experiences of children and families across both routes are more similar than they are different. Continuing to restrict a guaranteed assessment of support to the former group only would simply recreate some of the most perverse and damaging aspects of the existing legal framework.

43

We provisionally propose that a kinship care order may be made in respect of a child appointing a kinship guardian for such period as the court considers appropriate, save that the order shall in any event cease to have effect when the child reaches the age of 18. Do consultees agree?

Yes.

However, aligned with our response to question 35 and the proposal for the court to consider how parental responsibility is exercised, it should remain commonplace for orders to be for the entirety of a child's minority, and the recommended duration of any order should be made clear to prospective kinship guardians as early as possible in the process.

Whilst an order might cease to have effect upon a child reaching the age of 18, support into adulthood should remain a core element of support planning and associated consideration by the court (see question 41).

We would also encourage the Commission to explore a proposal of a post-KCO status in the legal framework for young adults who have spent time cared for under a KCO as a child, similar to that of a qualifying care leaver or former relevant child as defined in section 23C and section 24 respectively of the Children Act 1989. Whilst beyond the scope of the Commission's review, such a status could be used in the future to target tailored support and services to some kinship care-experienced adults.

44

We provisionally propose that there should be no minimum period of appointment for a kinship guardian. Do consultees agree?

No.

As outlined in our response to question 23, the discrepancy between the minimum 1-year duration proposed for kinship PRAs and the absence of any minimum period proposed

for KCOs seems odd, particularly given the significant time, resource and court scrutiny involved in the making of a KCO. The circumstances in which a KCO would be made for a duration of under one or even two years would surely be extremely rare, particularly given the average duration of court proceedings and given the option for a court to make an interim KCO (see question 45 below).

No minimum duration, particularly given the longer-term status of child arrangements and special guardianship orders, also risks sending a signal in a future legal framework that KCOs are expected or intended to be a vehicle best suited to more temporary arrangements. Orders made for short durations risk undermining the stability which children benefit from, and any uncertainty risks creating an additional deterrent effect for prospective kinship guardians.

45

We provisionally propose that it should be possible for the court to make an interim kinship care order, which would

(1) have effect for a period specified in the order, which would be no longer than a maximum period to be set out in statute; and

(2) automatically cease upon the earlier of the disposal of the application for a kinship care order by the court, or the child reaching the age of 18.

Do consultees agree?

Yes.

However, please see our response to question 3 for a consideration of the value and risks of an interim special guardianship order, much of which also applies here.

46

We ask consultees for their views on whether the provisionally proposed maximum duration of an interim kinship care order should be: (1) 8 weeks; (2) 16 weeks; (3) 26 weeks; or (4) some other period.

As a maximum duration for an interim order, 16 weeks may strike the right balance of ensuring the robustness of assessments and scrutiny without the risk of allowing unnecessary delay.

This also reflects both Coram BAAF's recommendation of a minimum 12 weeks for completion of a special guardianship assessment under Form K, and the maximum initial period allowed for the temporary placement of a child with a kinship carer under regulation 24.

47

We provisionally propose that

(1) a child may not apply to vary or discharge a kinship care order of which they are the subject without the permission of the court; and

(2) the court may only grant permission to make such an application if is satisfied that the child has sufficient understanding to make the proposed application. Do consultees agree?

Yes.

48

We provisionally propose that the court should, when making a kinship care order, consider whether the best interests of the child require an order to be made under section 91(14) of the Children Act 1989, placing restrictions on the making of applications

(1) to vary the order;

(2) to discharge the order; or

(3) seeking a direction about how the provisions of the order should operate by any person other than the kinship guardian.

An order under section 91(14) of the Children Act 1989 would have effect for a fixed period, and would prevent a named person from applying to vary or discharge the kinship care order, or to seek a direction about how it should operate, without first obtaining the permission of the court. Do consultees agree?

Yes.

See our response to question 8.

49

We provisionally propose that the making of a care order in relation to a child who is the subject of a kinship care order should not automatically discharge the kinship care order. Do consultees agree?

Yes.

The alternative is completely unconscionable. In the event a kinship child does need to enter care for any reason, automatically discharging a KCO and removing parental responsibility from a kinship guardian could be immensely dangerous at worst and unnecessarily disruptive at best.

50

We provisionally propose that the court may vary or discharge a kinship care order upon the application of a local authority designated in a care order with respect to the child. Do consultees agree?

Yes.

51

We invite consultees' views as to whether it should be possible for a kinship care order to contain provisions for a review of the order, or of any named provisions (such as a parental involvement provision) contained in the order, after a period specified when the order is made.

We would not be supportive of any proposal that a kinship care order contains provisions for a review of the entire order. Pease see our responses to questions 5 and 6 which are relevant here.

In some circumstances it may be appropriate for a KCO to contain provisions for the review of a specific provision contained in the order, although the court must be satisfied that it is a more appropriate vehicle for this consideration and judgement than the local authority through support planning.

52

We ask for consultees' views on (1) how a kinship care order could operate in a case where the kinship carers live overseas; and (2) how any problems with the use of kinship care orders in an international context could be avoided.

No response.

53

We ask for consultees' views as to the court process to be followed when an application is made for a kinship care order.

Learnings from the Child Focused Courts model and research with kinship families, children and young people and parents tells us that any process should be accessible and easy to understand, provide clarity as early as possible, be non-adversarial, allow for appropriate consideration of the voice of the child, and recognise the often-complex family dynamics in kinship care. The latter in particular demands family justice practitioners, judges and others who are skilled and experienced in working alongside kinship families.

54

We ask for consultees' views as to the process which should be used to assess the suitability of the proposed arrangement to meet the child's needs, when an application is made for a kinship care order.

In particular, we ask for consultees' views on

(1) who should prepare any such assessment or report;

(2) whether there should be a requirement to notify the local authority before an application for a kinship care order is made, and, if so, what that should be; and

(3) the matters which should be covered by any assessment or report, and the extent to which these should be variable depending on the characteristics of the kinship care order sought.

We would reiterate again that, regardless of the public or private law route, existing evidence on children cared for under special guardianship and child arrangements orders suggests their needs are more similar than different. Many kinship carers who do secure a legal order in private family law proceedings do so to care for children who have had previous significant children's services involvement and/or where safeguarding concerns have been playing out in the background.

Many families could benefit from a link made as early as possible in the process to a skilled local authority team who can ensure they are aware of the relevant kinship local offer and other support.

We would caution against any future proposal for tiered levels of suitability assessments; this would be antagonistic to the principle of a bespoke and flexible KCO and a more simplified system. It might also lead to crucial support needs or safeguarding risks being missed and relies on an 'assessment before assessment' which may not have the desired effect of reducing unnecessary delay.

55

We ask for consultees' views as to how best to ensure that the child's views are heard, both at the time the kinship care order is made and subsequently.

Support planning is crucial to ensuring continued practice which respects and acts upon the views of the child as they grow and develop. Research with children in kinship care highlights they do often understand more than adults assume, and do want to be involved in decisions about their lives whilst expecting adults to keep them safe.

The court should, as proposed in question 41, ensure adequate scrutiny at the time of making an order of how the child's voice will be considered throughout the intended duration of the order and how this will inform potential changes to support.

In addition to evidence from the use of Child Impact Reports in the Child Focused Courts model, the provision of independent advocacy services can help both at the time an order is made and subsequently.

56

We ask for consultees' views on whether, when care proceedings are brought by a local authority and the court is considering whether to make a kinship care order within those proceedings:

(1) the potential kinship guardian should automatically be granted party status within the care proceedings; or

(2) the court should be required to consider at an early stage whether to make the potential kinship guardian a party to the proceedings.

We believe it is right that potential kinship guardians are automatically granted party status within care proceedings when the court is considering whether to make a kinship care order, with the option to decline.

Too many kinship carers do not feel adequately informed about the child's circumstances and what is being considered during proceedings, and report the lack of status in proceedings makes them vulnerable to changes being made to plans without their understanding or input. Although party status may not always be necessary or indeed positive, it better reflects the significance of the role they will be taking on in a child's life should an order be granted, and confers more benefit than risk.

57

We provisionally propose that when a kinship care order is in force in relation to a child, no person shall be permitted to apply for

(1) a special guardianship order; or

(2) a child arrangements order; in relation to that child.

As an exception to this rule, a person may apply for such a special guardianship order or a child arrangements order at the same time as they make an application to discharge the kinship care order, and replace it with the order sought. Do consultees agree?

Yes.

58

We provisionally propose that when a kinship care order is in force in relation to a child, no person shall be permitted to apply for (1) a prohibited steps order; or (2) a specific issue order; in relation to that child. Do consultees agree?

Yes.

59

We provisionally propose that, if kinship care orders are introduced, a kinship carer (as defined in our proposed definition) should no longer be able to apply for a special guardianship order in relation to the child for whom they are caring. Do consultees agree?

Yes.

60

We provisionally propose that, if kinship care orders are introduced, it should no longer be possible for kinship carers (as defined in our proposed definition) to apply for a 'live with' or 'spend time with' child arrangements order. Do consultees agree?

Yes.

61

We provisionally propose that if kinship care orders are introduced, when an application for permission to discharge or vary a special guardianship order is made by (1) a parent; (2) a guardian; (3) a step-parent of the child who has parental responsibility for the child, or (4) a person who immediately prior to the making of the special guardianship order had (but no longer has) parental responsibility for the child. the requirement under section 14(D) of the Children Act 1989 that the applicant must satisfy the court that there has been a significant change in circumstances since the making of the special guardianship order should not apply where the applicant is seeking the permission of the court to discharge a special guardianship order and replace it with a kinship care order appointing the child's special guardian as a kinship guardian. Do consultees agree?

No.

Whilst it is right that there are straightforward options for movement from special guardianship to a KCO, in removing the condition for a parent to demonstrate a significant change in circumstances, this proposal risks undermining the promise made to families at the point of a special guardianship order being made. The introduction of a new order into the system shouldn't in effect retrospectively change the circumstances required for a special guardianship order to be discharged.

62

We provisionally propose that a care order in relation to a child should be discharged by the making of a final kinship care order. Do consultees agree?

Yes.

63

We provisionally propose that a care order in relation to a child should not be discharged by the making of an interim kinship care order. Do consultees agree?

Yes.

64

We provisionally propose that, if a care order and an interim kinship care order are in force at the same time, the court should when making the interim care order determine how parental responsibility is to be exercised by either the local authority, the parents, the kinship guardian or anyone else with parental responsibility. Do consultees agree?

Yes.

65

We provisionally propose that (1) it should be possible for the court to make a supervision order at the same time as making an interim kinship care order, and (2) the duration of the supervision order should not be limited by the duration of the interim kinship care order. Do consultees agree?

Yes.

66

We invite any other views which consultees may have on the involvement of a local authority when an interim or final kinship care order is made.

No response.

67

We ask consultees to share any further comments or views they may have on our proposals for the introduction of a kinship care order.

We are grateful to the Commission for being bold in their proposals and support the principle behind a simplified legal framework which includes the introduction of a kinship care order. It could help to close the unjust support gap which exists in the current framework between kinship families secured by an SGO and those secured by a CAO, and may lay the groundwork for a more comprehensive system of support based on need rather than type of arrangement, where the family lives, and the journey taken by a child through the system.

In particular, we strongly support proposals which would deliver greater consideration within the court of family relationships, support needs and support planning within the

making of an order. These are all fundamental to the positive outcomes and experiences of children in kinship care.

Below, we summarise 3 key points in relation to the proposed KCO which we would encourage the Commission to reflect on as their project continues.

1. Whilst there are clear benefits to a simplified framework which enables greater flexibility based on individual family situations, reform must continue to preserve the key elements which do work well in the system right now for many families. In particular, the security and autonomy granted to kinship families by the features of a special guardianship order are extremely valuable. Some of the Commission's proposals arguably neglect that kinship carers through special guardianship (or a KCO which grants enhanced parental responsibility) have the power to support greater parental involvement, additional contact, and reintegration back into the child's life; kinship carers have agency and we do not always need to rely on the court to deliver these changes. The presence of enhanced parental responsibility which lasts until a child turns 18 does not preclude this but can instead be the very feature which enable it and supports a route to 'permanence' attuned to the best interests of the child.

2. There remain unanswered questions about how a kinship care order would work in practice, and the role of Practice Directions in setting expectations around timing and process. Flexibility in the structural elements of an order is positive, but clarity becomes the crucial ingredient for families embarking on what could be an immensely stressful, adversarial and challenging journey through the court. Kinship families must understand as early as possible what the recommendation from reports prepared by Cafcass and/or the local authority would be and the parameters for what variation is possible in judgements made during proceedings around parental responsibility, the duration of orders, and what is explicitly written into the order itself. Without this, we risk fewer kinship carers feeling able to take on the role and fewer children benefitting from well-supported kinship care and the stability it provides.

3. Given the Commission's scope and the inevitable (and understandable) reliance on court-led solutions to the problems identified, there is a risk of optimism and in parts naivety about the ability of the court to solve problems and resolve tensions at one point in a family's journey. Too much well-intentioned fortune-telling risks more harm than help. Kinship families are often complex, with unpredictable scenarios and ever-changing circumstances as children grow and relationships heal and fracture. The legal system is not necessarily the right forum for every decision, and the ability to deliver the proposed reforms here relies on significantly upskilling the judiciary and improving their knowledge and understanding of kinship care.

IMPACT CONSIDERATIONS

68

We ask consultees to tell us if they believe or have evidence or data to suggest that (1) the operation of the current law governing kinship care; or (2) the provisional proposals which we make in this consultation paper results, or would if the law were reformed in the way we provisionally propose result, in advantages or disadvantages to certain groups or based on certain characteristics (with particular attention to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

We would draw the Committee's attention to our and other research which evidences what we know about kinship families' characteristics and the significant equalities considerations in kinship care which follow. For example, kinship carers are disproportionately older women and more likely than others raising children to be disabled, in poor health, on low incomes or in receipt of state benefits, living in insecure housing, living in areas of high poverty and deprivation, and to have additional caring responsibilities. There are patterns of over- and under-representation of children from particular ethnicities and from particular areas of the country in different types of kinship care arrangements.

Research about the ethnic and social gradients in child welfare intervention (e.g. see the Child Welfare Inequalities Project) will be very relevant too for discussions of kinship care given the reasons why children enter care or are placed on child protection plans are largely very similar reasons to why children enter kinship care in its different forms. Poverty and deprivation are a primary driver of the conditions which reduce parenting capacity and increase the likelihood of a child requiring the care and support of someone in their family network.

The proposal made in question 41 around support planning provides some opportunity for potential improvements to the experiences of particular communities less well-served by existing policy and practice. As outlined in our guidance around support planning: "Kinship families will also come from many racial, ethnic, cultural and faith backgrounds. Some families experience additional barriers due to inequality within services and systems. A good support plan should recognise these realities and ensure support is fair, culturally responsive, and actively addresses barriers linked to race, faith, ethnicity, and heritage."

69

We ask for consultees' views on how any disparities in the operation of the current law governing kinship care could be reduced or removed.

No response.

70

We ask consultees to tell us anything relating to their experiences of kinship care arrangements, or our provisionally proposed reforms, that they have not yet had a chance to express in response to earlier consultation questions.

It is extremely welcome to see proposals being made which are designed specifically for kinship care situations and which recognise what is unique about the needs, strengths and experiences of kinship families. For too long, kinship families have been an afterthought in systems designed for foster, adoptive and other families, and we appreciate the depth of the Commission's consideration about how best to simplify the legal framework in a way which respects the key features and qualities of kinship care.

Whilst we recognise the importance of changes to the legal framework, the limitations of the review's scope do present considerable challenges for respondents when weighing up the relative benefits and drawbacks of any proposal made. Much of the very accurate and comprehensive problem diagnosis shared by the Commission throughout its paper concludes that the core system challenges stem from poor and variable support for kinship families, but the only levers available to them to remedy such injustice are legal ones.

As such, determining whether to agree or disagree in places feels largely academic, disconnected from how such changes might be experienced for and impact on children and families given the decoupling of proposals from any consideration of the funding, support or resourcing which would go alongside.

Ultimately, accurate judgement about the right options for reform to the legal framework cannot be abstracted from a consideration of meaningful financial, practical and emotional support, and the success of any future reforms relies precisely on what is unable to be considered within this review.