



THE ALL PARTY PARLIAMENTARY GROUP ON

KINSHIP CARE

APPG Legal Aid Inquiry

Minutes of Oral Evidence Session 2

Wednesday 9th March – 1.30pm to 2.30pm, Zoom

Attended:

Parliamentarians:

Andrew Gwynne MP (Chair); Baroness Armstrong (Vice Chair); Lord Hannay; Baroness Drake; Marie Rimmer MP; Andy McDonald MP; Griffin Mosson (Office of Andrew Gwynne MP); Charlotte Warris (Office of Kate Osborne MP)

External:

Cathy Ashley (Chief Executive, FRG); Jordan Hall (Public Affairs Manager, FRG, Minutes); Angharad Davies (Social Work Adviser, FRG); Frances Edwards (Legal Adviser, FRG); Ellie Cronin (Law Society); Alex Smeiman (Law Society); Pete Bentley (Nagalro)

Apologies:

Catherine McKinnell MP (Vice Chair); Ian Byrne MP (Vice Chair); Tim Loughton MP (Vice Chair); Miriam Cates MP (Vice Chair); Steven Bonnar MP (Vice Chair); Baroness Finlay; Lord Blunkett; Kerry McCarthy MP; Baroness Masham

Guests giving evidence:

1) Law Society - Cris McCurley

Cris McCurley is a partner and head of the International Family department at Ben Hoare Bell in Newcastle. She is a member of the Law Society's Access to Justice Committee and Resolution's Domestic Abuse committee. She has given evidence about legal aid to the UN CEDAW committee at their assessment hearings about the Government, and is a member of a number of relevant working groups about access to Justice. As a member of the Children panel since 1993, she has represented many kinship carers in public law children proceedings.

The Law Society is the independent professional body for solicitors in England and Wales. They are the voice of solicitors, driving excellence in the profession and safeguarding the rule of law.

2) Resolution – Samantha Little

Samantha is a partner and head of the children law team at Russell Cooke, advising clients on all aspects of children law. She is experienced in assisting a range of clients including vulnerable adults and children. Samantha has Higher Courts (Civil Proceedings) advocacy rights and is an experienced advocate, representing children, parents and family members in court. She is a member of the Law Society's Children Panel (since 1998) and is a Resolution accredited specialist (in public law children, private law children and adoption). She trained as a Resolution mediator and is committed to helping clients match the legal process best suited to their needs, avoiding court proceedings where that is possible. Samantha is a member of Resolution's Legal Aid Committee and she provides training on children law

issues for Resolution. She is a member of the Association of Lawyers for Children and speaks at the annual conference on legal aid issues.

Resolution is a community of family justice professionals who work with families and individuals to resolve issues in a constructive way. It was founded in 1982 by a group of family lawyers who believed that a non-confrontational approach to family law issues would produce better outcomes for separating families and their children.

3) Lawyers in Local Government - Sarah Whitworth and Helen McGrath

Sarah is team lead with responsibility for Adult and Child Protection and Education at nplaw (Norfolk Public Law). She qualified in 1994 having specialised in litigation – criminal and family. She remained in private practice upon qualification, working in Thetford (criminal and family), Attleborough (family and civil) where she became a partner and qualified in collaborative law, as well as in Kings Lynn and London (family). In private practice, Sarah acted for parents, children guardians and family members such as kinship carers, undertaking legal aid work. In 2013 she moved to work in Local Government in Norwich as a senior solicitor in the child protection team conducting case work and advocacy, becoming team lead and then team manager in 2015. Over her career, Sarah has been a Law Society advanced family specialist and resolution member in private practice as well as a resolution collaborative lawyer and a children panel member. Sarah is a keen member and trainer for the LLG Eastern Region special interest group in child protection law and a member of the LLG.

Helen is a qualified solicitor and practiced in four London Borough Councils from 2003 before joining LLG in 2015. As Head of Public Affairs, Helen is responsible for driving forward the campaign element of LLG's work and contributes to the formation of policy and membership benefits. Helen leads on responses to government consultations and written evidence; producing guidance, protocols, and briefings of benefit to the membership whilst engaging in stakeholder and corporate partner liaison. Helen oversees LLG's National Lead programme, providing training and chairing roundtables. Helen is also the Chief Projects Assessor for the Law Society's Local Government Diploma in Law and Practice.

Lawyers in Local Government (LLG) is the professional membership body representing, promoting and supporting the interests of local government legal or governance officers working within a local authority. This includes Monitoring Officers and their deputies, solicitors, barristers, legal executives, licenced conveyancers and trainees.

1. Chair's Welcome – Andrew Gwynne MP

Welcome to the All Party Parliamentary Group on Kinship Care. This is the second of our evidence sessions as part of our inquiry into legal aid and advice for kinship carers and prospective kinship carers. We're running this inquiry because we know it's a huge issue for kinship carers. Relative friends are being asked to step in to avoid child from remaining in or entering into the care system. Yet, they're often then left having to navigate a very complex legal system and having to make huge decisions for their family without access to free, independent legal advice.

Two weeks ago, we heard from kinship carers who bravely shared their own experiences. They became carers in varying circumstances and all faced challenges accessing the information and legal advice that they needed to get the best of their children. We also heard

from Rosie Turner of Ridley and Hall solicitors about their work supporting special guardians particularly in relation to securing adequate support. Like many carers, my wife, Allison and I had to go through the family court for a special guardianship order for our grandson Lyle's upbringing. These challenges are all too familiar to our family.

The Ministry of Justice made welcome commitments in 2019. Three years on progress has stalled. Today we will hear evidence from three legal organisations representing practitioners across children's law. We're pleased to welcome you today and look forward to hearing your perspective on how the system needs to change.

2. Evidence from Cris McCurley (CM) on behalf of The Law Society

Thank you very much and I'd really like to thank the APPG for highlighting this really important issue. I've been in practice now for over 30 years and my practice involves both private and public family law. I'm also really passionate about legal aid. I regularly speak about the devastation that's been caused to families and especially to children by LASPO (Legal Aid, Sentencing and Punishment of Offenders Act 2012), which effectively removed eligibility for most private family law in the majority of cases. I think there's no arguments from any practitioner against it being a disaster.

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

I want to say something about financial eligibility because this is what really causes people difficulty. I'm sure the APPG will be familiar with the Law Society's research and report entitled 'Priced Out Of Justice' which found that even when applicants have insufficient money to pay for basic household necessities, such as utilities and food, they can be deemed too wealthy for legal aid, or at least wealthy enough to pay a contribution towards that legal aid for the duration of the case. We know that those outgoings are set to rise substantially and yet utilities and food are not deducted from income for the purposes of the means test. That would really need to change in my view.

Families have to be well below the Joseph Rowntree Foundation's minimum income standard to qualify for legal aid in its entirety. There is also a capital means test on any savings or equity in property. Many kinship carers that I represent have limited pension income but may have a house, the mortgage on which they've worked their whole working lives to pay off. That equity is then deemed in most cases to be capital which can be accessed to pay for legal costs. These are rigid rules regarding capital with little or no discretion.

To give an example, I represented grandparents of two children that the local authority wished to place with them. This was opposed by the paternal family and then followed an incredibly aggressive and hostile battle with the father's siblings wanting to remove the children from the UK. The grandparents were initially refused legal aid as they didn't have parental responsibility for the children, so could not get non-means tested Legal Aid. I can also add that they were physically assaulted in court on at least one occasion by the paternal

family and verbally assaulted at virtually every hearing. They paid off their mortgage but had very little income, and needed what little they had to make the necessary adjustments to their property in order to give an early teenage girl and boy their own room, to fit a new shower room and to install a new loo. These kind of expenses are not taken into account when considering financial expenses and capital.

I've got an ongoing case at the moment. It's a private child arrangement order, which illustrates why it's essential for kinship carers to have funding in care proceedings and in any following private law proceedings. In this case, the local authority moved the children from their mother's care into foster care and started care proceedings. The local authority were able to give the maternal grandparents funding to get some legal advice. But it was limited to a couple of hours advice and preparation of their statements, in which they had to set out their wishes for the children to have contact with the mother following the close of the proceedings. They actually wanted very, very limited contact for the mother because the children have been very distressed, there had been abuse by her, and they really needed time to settle with their kinship carers and the opportunity to do that as well. And for everyone to get used to their new family life experience. At the final hearing of the care proceedings the court disagreed and ordered weekly contact for the mother. The grandparents weren't represented in that court arena, and had to undergo the contested public law proceedings as litigants in person. They didn't really follow what was going on, what was being said or what was happening to them. Nor could they cross examine their own daughter, because it was just far too emotional for them. With the level of contact that was ordered by the court, the children have not been able to settle properly with their grandparents. In the midst of them being given counselling by a professional counselling service, the mother then applied to discharge the special guardianship order. At that stage, the grandparents applied to reduce mother's contact to a manageable level. The court then ordered a psychological assessment on the whole family to help decide the issues. These assessments can literally cost £1000s. We're lucky in this case, because at this point, the local authority took over payment of the grandparent's legal costs, but that's really, really unusual. If not, the special guardians wouldn't be eligible for legal aid for these proceedings.

In another case, I represented an aunt caring for her niece whose mother had been murdered by the child's father. She and her partner didn't qualify for legal aid. Although the local authority were prepared to offer some limited contribution to their costs, by far the majority of the work had to be done on a pro bono basis, including the two day High Court hearing to finalise the case by way of final contest. The father was a litigant in person and had this really lovely young woman not been represented, she would have been in the position of having to cross examine the father who had murdered her sister. I think I'm sure every one of us would say that this is an absolutely inhumane situation to be placed in. She was literally shaking the entire time that she was in court.

It's not unusual for local authorities to pay for a couple of hours of free legal advice for kinship carers, when proceedings are under underway. This doesn't even touch the sides in preparing kinship carers for the twists and turns that are a daily part of court life which we as practitioners are used to and we've learned to expect the unexpected. To the layperson, it can be traumatic and bewildering, especially when they're up against members of their own family and at a time when they may be coping with their own grief about loss of a family member as well. It's not right to rely on cash strapped local authorities to pick up the bill, or legal aid solicitors to work pro bono in these cases. Yet, these people deserve representation, especially if the local authority negatively assesses them as carers. And it has to be said local authorities don't always get these calls right. In many cases, the court may disagree with a negative assessment.

This morning I had a look at the cost of keeping children in care which is the alternative. The only reliable figures I could find were the National Audit Office figures which are very old, from 2014. Those figures state that to keep a child in foster care for a year, the cost is approximately £29,000 to £33,000. If a child is placed in a residential home, the cost is estimated between £131,000 and 133,000. I think I can confidently say that those costs will have risen considerably over the time period.

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

I'd like to thank the APPG for taking the time and consider taking the time to consider these arguments that have been put before you today. These people need our help, these kids need our help. I hope that we can make some progress on this issue.

3. Evidence from Samantha Little (SL), on behalf of Resolution

Good afternoon. Thank you for inviting us to contribute to your inquiry, which I agree with all that Cris has said, is vitally important. Resolution has signed up and work together with the Family Rights Group on the briefing that I'm sure you've had access to about the proposed changes to family law legal aid. Resolution has for many years been trying to improve the legal aid provision for special guardians and prospective special guardians. Broadly speaking, we take the view that they should have access to legal aid and it should not be on a means basis. There might be a place for a limited merits test in some situations, but really their means should be disregarded.

I am going to focus a little bit on private law cases if I may. So those where the local authority are not involved. I know that's a particular interest of the committee. I just thought it was worth trying to put myself in the shoes of aunty or granny who has been asked to take this action. First of all, we know that kinship carers have probably already been through the mill by the time they get to the position of applying to court. They've been trying to support an adult child, or an adult who's now having difficulties. They've been looking after their grandchildren. They've probably been to a number of local authority meetings, engaged with social workers. Their grandchildren or nieces or nephews will probably have a high level of degree of need. They're already struggling with an awful lot. And when a social worker says to them, oh, well, you've been looking after, say, little Johnny, for a year now we think you should go and apply for an order. It is said often and I don't mean to criticise social workers at all, but it is said often as if that's the most obvious thing for anybody to go and do. We work in the system and we know how tough that is for lawyers. So to say to somebody just go off and find a solicitor and make an application for an order is really difficult.

We get numerous calls in our firm in South London and we honestly cannot help everybody. We have so many people we turn away. We know that kinship carers will ring up a number of solicitors and will not get anywhere. We take on what we can. Like Cris has said, we often

work pro bono for cases because we just feel so moved to try and help people and do what we can.

At the point someone comes to us, we will negotiate with the local authority and ask them what they're offering. That varies from local authority to local authority. My practice in South London straddles many authorities in London and Surrey. The rates and offers are different, sometimes it'll be two hours of legal aid rates, sometimes it'll be five hours of legal aid rates, sometimes it'll be £500. It completely varies as to what you're going to be given. If you want to go above those hours as a solicitor it's extremely difficult then to do that.

When we talk to kinship carers, they have no idea, Most of them haven't been to court. They don't know how to make an application. They don't know how to go to court. They don't know what's going to happen when they when they are in court. And we're expecting them to just go and secure these orders. We know how difficult the COVID pandemic has impacted, how much difficulty the COVID pandemic has caused for court services. We as lawyers struggle to even get through to the court ourselves. So goodness knows how kinship carers are meant to navigate those pathways and just pop their application in and attend a hearing.

When we meet with relatives, we sometimes actually I've tried to get a local authority to take care proceedings, because what I would say is kinship carers who are within public law care proceedings often have a slightly easier road through. I'm not saying it's easy at all, but it's a little bit easier than the family members who have to make their own applications.

And to add to what Cris has said in terms of funding. Not only are they perhaps being expected to use their savings if they are going to get legal aid, because they have built up equity in their home. But they also don't have the capacity to take out loans because they don't have a regular income. So that option isn't available to them. They can't remortgage their properties, again, because they haven't got any income to be able to pay that off. And that money is to see them for the rest of their lives. They've got to use that money to live.

There also is an issue with legal aid that if the parent is not actively opposing the application for either a child arrangements order or a special guardianship order, the agency will say, well, what's the problem, there is no opposition here, they don't need legal aid. And that's something I'm not sure that all local authorities are aware of.

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

The other difficult factor later on in the proceedings, if they get that far is negotiation of a special guardianship support plan. I've acted for a number of kinship carers in private law cases where I've argued very hard for kinship carers to be given special arrangements for payments, for example, a foster care equivalent rate. In my area, very often the kinship carers may be given an allowance which is equivalent to the amount that is given to foster carers to look after the children, but they're not given the extra amount that a foster carer would get. But I've often asked and successfully asked in some situations for carers who were in their older years to be given a larger payment equivalent to a foster care payment, even though they're not deemed as local authority foster carers because they're going to need extra money that they're not able to supplement with their income. But those

negotiations are tough. And as Cris has indicated, if you want to agree some settling in costs for furniture, or heaven forbid you need some sort of extension or an extra room or something, they are really difficult to do. For lawyers like me, if you've been given, say, five hours of money to be able to help a kinship carer, by the time you've got your application sorted and a statement done, you're pretty much done. And I don't want to over emphasise the point, but I think it's important that lots of lawyers are just doing hours of pro bono here to help people. And again, that shouldn't be happening, because it means that lots of people aren't getting the help that they need.

I think the other problem for people in public law proceedings is that, as Cris has said, if they're not kept informed, they don't have a clue what's going on. I've had cases as I'm sure she has as well, where you get to the hearing they're not involved. In fact, her example is one of these where contact is agreed. They haven't even been asked what they want, what they think they can provide. If they are going to be the carers for the children long term, it's, it's absolutely essential that they are involved in that case, fully represented.

The other factor of not having representation is they can't necessarily be available for a five or seven day hearing, if that's what happens in the public law case, because they've got work to do, they've got children to look after. So they need a representative who can front it up for them, and tell them what they need to know.

I don't want to be critical of local authorities and I there is an argument that they shouldn't be fronting this up. But it is very difficult to work with different local authorities who offer very different things. Some are incredibly generous, and some don't offer anything at all. I've got a particular case on at the moment where a grandmother has given up part of her work, because the four year old needs to be settled in properly with the child which is very sensible. And she's down about £500 pounds. And during the course of the case, we thought that the local authority had agreed to make an ex gratia payment to supplement that, just while the child settles in and things become more normal. But that hasn't been agreed. So a grandmother has taken a £500 hit per month on her income in order to look after her grandchild. Again, it's another example of why that sort of situation just doesn't seem to be acceptable.

The other difficulty for many carers is the level of special needs that children have, which is not only emotionally exhausting, but practically exhausting. But also they need very specific advice and help about how to look after their children. I had an example where a kinship carer was being asked to do something with regard to a child, it was a child who couldn't get to school, and the kinship carer is being asked to just pay for a taxi to get that child to school because she had too many children. So she couldn't get them all to school, to the right school, they were going in different directions. And I just said, well, the foster carer wouldn't be expected to pay for the taxi to take the child to school that just isn't right.

I think that getting advice at the outset on what type of order is essential. I think I would just conclude by saying, I think what we all believe is that if we don't provide this proper legal advice and representation at the outset, we are storing up potential problems for later on. It makes much more sense to invest at the beginning, get it right. I think in fact there would be court timing saved and a number of other savings one could try to quantify that would make a great deal of sense if we got it right at the beginning. And arguably, the emotional and practical support that solicitors can give to kinship carers can't be underestimated.

4. Evidence from Sarah Whitworth (SW) and Helen McGrath (HM) on behalf of Lawyers in Local Government

SW - Thank you. Can I also mentioned that prior to joining a local authority I also worked for nearly 20 years as a private practice solicitor so I do have experience from both sides of the fence in representing both local authorities but also individual kinship carers and parents.

I think the first point that any local authority wants to make is that kinship carers are much needed by society. We know that children's outcomes are far better when they remain cared for within their own family, where they have a sense of belonging and love. It's true that kinship care is not always successful and foster carers offer good quality of care and love. But research is clear that children's progress is better in life where they remain within their own families.

Kinship carers are often asked to take on responsibility of caring for a child with limited notice. Care proceedings are now mandated to conclude within 26 weeks and possible kinship carers may not be identified at the start of the case, even though parents will be asked to name possible alternative carers before proceedings commence. In early stages, this is often because parents struggling to care do not want to share with their families that they're having difficulties. They may only turn to kinship carers when they have no alternative and there's a final realisation that the local authority in final evidence is seeking orders for the children to come into care.

Local authorities recognise the importance of family and friends networks. But before proceedings start, they cannot share information with others without the parents' consent, unless there's an immediate safeguarding reason to override this. They seek to support kinship carers and hold family network meetings, family group conferences, to connect with families, but they don't always get full attendance. Even then families are not always aware of how serious the situation is, especially if parents minimise their difficulties.

Some kinship carers do understand the difficulties and have already taken on care but seek help to regularise their situation under the law. So they can access benefits, parent those children and seek to obtain the proper support they need. They're often trying to hold families together, having to make unplanned and significant changes to their own lives, and deal with the emotional challenges as well as navigate legal proceedings.

Legal aid isn't helping this situation. And currently, legal aid is not available to everyone who really needs that support. In care cases, it is available to parents who risk losing their child but not to family members offering to care. In some cases, and we certainly have had a rise recently as a result of COVID, we have non-accidental cases where kinship carers or potential kinship carers even face allegations of non-accidental injury without support or advice. In private law proceedings between family members, no one gets legal aid. And often, there's a call on local authorities to support the proceedings to ensure decisions can be made. Local authorities have to divert funds from direct support of children in their localities to run legal support for the courts and, where needed, to fund kinship carers' private solicitors to get orders they need to prevent those children coming into care. Listening to Samantha, I can say that Norfolk do fund those private proceedings. It's interesting to hear of the different experiences. But even with that funding, there is difficulty. There's little support in the voluntary sector for kinship carers. And there aren't that many experts in the field because there's a generally a limited supply of good quality care lawyers across the nation.

Sometimes it's possible for kinship carers to access legal aid but it is limited. The kinship carer can get parental responsibility, and one of the previous speakers mentioned this, for a child already in their care. And they can seek legal aid but it's not an easy application to make without support and guidance.

Local authorities do their best but budgets are now much tighter as savings have to be made. Choices may have to be made between direct work and support for families and keeping those families together and providing legal funding to kinship carers.

Access to the court is hard for family members. They don't have the right information all the time and the court needs to direct what if any information they can receive in writing. This makes it difficult for them to know what's going on or to receive information. Local authorities will always aim to keep them updated and informed where they can, but they often want direct access to the judge to set out their case. This has been exacerbated by COVID, where kinship carers may find it hard to access courts, who hold hearings wholly or partly online, and where they have delays, which creates difficulty for families to understand the timescales.

If asking for special guardianship, most local authorities will fund some initial legal advice as both of my predecessors have stated. But that's to ensure they understand the commitment they're making and they will provide kinship support, but carers often find it difficult to navigate the legal process and the decisions the court makes.

In care cases, there's often what we call parallel planning, which is where the court has to consider different options for a child at the same time. This makes seeking to fund any prospective special guardian by local authority, actually quite hazardous to the proceedings on occasion, because they need to remain neutral while the assessments are ongoing. They need to allow kinship carers to have a neutral source of funding and independent advice and representation to prevent that interfering with the perceived fairness of the court.

Local authorities regularly fund private proceedings where legalisation of an existing arrangement is needed. But again, as Samantha was saying, those positions can change as parents struggle with the emotions of being unable to care for their own children and families can end up in really quite complex legal disputes. Lack of legal advice for all the parties can exacerbate tense and difficult situations and again lead to allegations of unfairness. So if a local authority funds a grandparent, then the parents can sometimes say the process is unfair for them.

If a local authority does not recommend a kinship carer through assessment by themselves, then that potential carer would not be funded. The local authority do not divert funds from direct work with children to fund a person to fight their decision not to approve them. Sometimes that seems a little unfair, but we get so many cases that are contested by people, that it just isn't possible for us to fund them. Local authorities do try to give people a fair opportunity to dispute their decisions through the courts. But budget limitations make them pragmatists. There are pro bono organisations who might represent them, but there aren't enough and they tend to focus on supporting parents disputing contact and living arrangements for children who cannot access legal funding and private proceedings.

Assessment of kinship carers is now quite a complex process. Following the work of the judiciary and the recommendations of the special guardianship reports, there is now more focus on assessment in proceedings, the quality of the kinship care and the use of foster care standards and payments. Although more support is offered by local authorities, from kinship care teams, and there is access to therapeutic support, this is within a system where young people may have high reparative needs and delayed trauma. Navigating this

alongside legal proceedings is sometimes too much for families, and I'm sure we lose a few on the way.

HM – In present times placing kinship care on a formal footing is more important than ever because it's important to handle matters of health grant permissions for school, it is a factor in the consideration of housing allocation or priority need, as well as benefits and immigration. Now it's important to emphasise that any payments a local authority make in regard to kinship are discretionary. The majority of local authorities in support of the kinship carer will provide funding for initial advice at least and we've heard something about the limitations of that this afternoon.

LLG will cover the issue of funding more extensively in our written evidence. The position is far from straightforward. In respect of a lack of legal aid, in reality there is an expectation for local authorities to provide support to the court process, who themselves find it difficult to manage litigants in person, as well as parents and their lawyers to inform and drive forward alternative carers. Not only is there an expectation local authorities will fund advice for kinship carers, it is noticeable how legally aided parents do not themselves drive forward kinship carers as witnesses in their proceedings, as their funding arrangements do not support or incentivize this.

Our legal aid is a huge issue and local authorities have regularly asked to cover the gap that legal aid leaves both in this regard and in expert instruction, often by £1000s and litigation support and there's no extra funding provided for this, or recognition of these difficulties. With local Family Justice Boards often not attended by legal aid representatives, even where remote attendance is used, and they could be assisting to resolve these issues.

There are wide variances in legal aid across the country on the basis of different decision making and delays in the system, which mean local authorities are sometimes faced with the need to step in and cover funding to ensure young children have the option of adoption in their care plan when there are no kinship carers available. Many local authorities set a figure for initial advice and make it a condition. Children's panel solicitors are used to ensure quality of advice and prevent excessive billing. LLG membership feedback is that often private practice solicitors and not all but often they won't accept the rates of payment a local authority will set for initial advice. They want higher values whereas authorities want legal aid rates given these are rates paid in court and for their own in house solicitors.

Most firms now seek hourly rates of between £200 and £300 per hour, whereas family legal aid rates are now paid at £65 to £75 per hour. As there are disparities between the amount authorities have set, firms also question why some pay more and others less and sometimes refuse to take a lower amount where a higher amount can be found elsewhere. The extent to which private practice solicitors can support this area of work is impacted by the low rates of legal aid, as opposed to other areas of law. And sometimes, not always, this does affect quality. We hear from our members that more junior members of staff or even at times unqualified members of staff are advising which is obviously not helpful.

Children's services departments often pay for attendance to court, especially where they are seeking to support a family arrangement without the need for care proceedings, or allegations of significant harm against the parents. However, kinship carers, often grandparents, may then be accused of being overbearing by the parents, who in these cases might well often have learning difficulties, and are not funded by legal aid as these are private proceedings. The current legal aid system does not help families navigate the legal system when they need it, and drives them to more adversarial processes and even care

proceedings when that is not in the interest of the children or long lasting kinship arrangements with carers and parents working together.

By making it the responsibility of local authorities with different budgets and reserves, a variation of practice occurs across the country, with some local authorities more challenged financially than others, which can obviously impact provision. In some instances due to financial constraints, public law proceedings are used to enable a family to obtain a child arrangement order and prevent instability, which in reality is like using a sledgehammer to crack a nut.

LLG would advocate for publicly funding relatives in situations where kinship carers are assessed as being appropriate. There are, as we've heard, very good, long term reasons why a child should remain with a family if this can be achieved, both in terms of outcomes for children and the saving of societal costs, as well as the direct costs of resolving practical care. But not the legal legitimacy and framework required. Local authorities could then divert funds to better kinship support to sustain placements in the long term, and target support where it's needed within the family.

Overwhelmingly, there's no doubt that kinship care is of essential importance. If we are to stop children from entering the social care system, kinship carers have a critical part to play. Children have the benefit of retaining family links and remaining part of the family network. If carers were better supported in the court process, they may be more willing to come forward, more able to overcome challenges and unintentional barriers the legal system creates. It would also be helpful if more people within the general public knew about kinship care, and what it means. There's a wider understanding and maybe better recognition in society, people may be more willing to put themselves forward. They would be better motivated to do so if they had confidence that there is an independent advice and support provision along the way.

Thank you for inviting LLG to speak today on this incredibly important issue.

5. Questions

Q1, AG – What legal aid reform would make the biggest difference in your view?

SW - I think the main thing is that it should be given the seriousness it deserves. We are interfering with family arrangements and the right for parents to raise their own children and equally, family members to be part of that. So I think it should be non means tested, just as it should be and is for parents in care proceedings. By limiting that they create an unintentional or maybe intentional, but I think it's unintentional bias, which actually means that there are more children coming into care in my view than the need to.

SL - I would agree, it must be non means tested. I think it also should be for most applicants non merits tested as well. There may be a very small number of cases where merits test will be important, but I think it's non means testing. I think also it's important that in freestanding SGO applications, where the local authorities aren't involved, the parents should also get that funding because it's not then fair if the relative carer gets free legal aid, and the mother or father doesn't, when the effect of that order is a very serious long term order, which potentially would last for the rest of the child's life. So there should be an equality of arms of the litigants in those cases.

CM – I completely agree with what Samantha has just said. In terms of legal aid in family law generally, investment, investment, investment, I think has to be the watchword. Rates are

ridiculously low and not sustainable. For kinship care cases, in particular, and repeat what I said before, these people are heroes who are keeping children out of care. We should be making everything available to them that we can to support that very, very difficult decision that they are taking.

Q2, AG to CM - When a potential kinship carer does not have access to legal advice and representation at critical times, what are the implications for children and for the outcomes for children of that?

CM - The case example I gave of the current case that we have ongoing, which started off as a public law case and then went into private law. We've got children who have had to be removed into foster care. Foster placements have broken down because these are very disturbed children. These amazing heroic grandparents have come forward and said we will have them, we want them. Yet they are not funded to be at critical hearings when important decisions are being made that could very easily disrupt the placement and end up with the children going back into care, such as, how much time will they have with their mother, who's been found by the court to abuse them?

I could give you hundreds of examples, but I think that the risk to children and the risk of significant harm to children continuing if the right people are not funded to make the right applications is significant.

Q3, AG to SL - Can I ask you about the Ministry of Justice 2019 Action Plan which proposed an extension of means and merits tested legal aid to prospective special guardians where they had been positively assessed by children's services when seeking an SGO in private law proceedings? We know that hasn't yet been implemented. Does that change alone do enough to improve legal advice and representation for kinship carers in private law proceedings?

SL - It's an improvement but no it doesn't go far enough. I think in particular, the retention of the means test for older kinship carers is a real problem, because they will usually fail them. The thresholds for legal aid are not high at all and they will usually fail them so they won't be in any better position than they were before. It might help an aunt or uncle who are in employment and therefore paying a mortgage and have different outgoings that can be deducted off the means test. However, the retention of the means test doesn't really make much difference.

And if I may just add a comment to your previous question. I think another risk is that if kinship carers have too difficult a task to apply for these orders, they just won't. But they are in a very precarious position without any legal responsibility. If their adult child comes knocking on the door to collect the child, the grandchild, they have to give the child over. Obviously, the police may be involved and may come around and say don't, but why should that happen. They've got no legal responsibility, they may suddenly find themselves not able to deal with a school or a doctor, because they haven't got any parental responsibility. They don't have any security or they may want to go abroad and find that they can't, because the mother is saying 'I don't want you to take the child on holiday'. The risk is if it's too difficult and they've just got too much else going on, they don't protect their placements. And that's very disruptive and damaging in the longer term.

CM - To add to that, the police are very, very unlikely to get involved where the kinship carer doesn't have any legal locus. Because they will rightly say, well, the parent has the child, they're the person who's got the legal responsibility and the rights to that child. This is a civil matter, go to a solicitor and go to court.

Q4, AG to SW and HM - Can you give the parliamentarians here a sense of the volume of cases that are coming before court and the pressures that children's lawyers are seeing on or in the family justice system at present?

SW - In Norfolk we don't actually in the legal team deal with private law, because we've got so much care proceedings work. We are one of the biggest counties and we have about 1000 children in care at any one time. We've got 160 cases, that's not children that's cases, currently before the court. That will be mirrored by the bigger counties. Certainly Suffolk and Essex around us have similar levels. With the private law I couldn't give you the details today but I can certainly get those to you in any written evidence.

Q5, AG – on the workload of children's services from your perspective, what are the impacts on assessment, the case progression, and court proceedings where potential kinship carers do not have the benefit of legal advice or representation? Does that mean additional pressures for local government?

SW - Yeah, I would say so because there are finite numbers of social workers. Quite rightly, we're becoming more and more challenged about keeping families together. So they will be putting their efforts into safeguarding situations, but they can't be in all places at all times. It'll be the ones that are highly unstable or dangerous that they will focus on more because of the risks. That's why it becomes quite frustrating when we have to start care proceedings really to stabilise a good family arrangement that's become difficult to maintain because they can't get an easy or quick resolution to a situation. Things become exacerbated and then that becomes quite difficult for them. So our preference would be for them to be properly supported so that we can actually focus on the children that don't have the benefit of kinship carers who perhaps need more of our intervention.

Marie Rimmer MP (MR) – Just comments. I was a Councillor for 39 years and children's services to me, no matter which government, I don't think our country's got its act together at all on children's services. I got cases when I was a councillor and now as an MP. Yes, there's pressures on social services departments. Absolutely no doubt about it. You get your good and your bad. I have foster parents who are excellent and now packing in because of things. I have grandparents who have children taken off them and then they have to go to court to get the child back costing £15,000 pounds. Everything seems to be hotch-potch.

Kinship carers are so valuable. You couldn't get anything better for a child than kinship carers. Yet, we can't even get that right. The whole legal system is falling to pieces and nobody seems to care. Obviously not including everyone here and everybody involved in the system. But when decisions are made about funding on legal rights and everything, it's the cost. I worry about the number of children that are denied access to a parent simply because a separated parent can't afford to go through the courts to get access to the children.

I have all these cases and I just wonder how many children are denied access to their father because they can't afford it. I'm sorry, I've got no answers. I come to these things to learn and I've learned more today. So at least I have got some idea about what's going on and why it's happening. I'm sorry. I just feel so desperate. I've got a lot of experience with it. I think there's a need for a national inquiry, something to get the whole business sorted out about children. We've got young teenagers going out of the borough and unregulated homes. It's just horrendous. If you're not fortunate to have a good family at the beginning, with no problems, my God, your life's in jeopardy.

Q6, Lord Hannay (LH) – It strikes me listening to all this, that one or two things are pretty clear. That kinship care when it works is a good deal for society. It's actually providing something that's needed, which is valuable, and at a very reasonable cost. It also strikes me from this that getting kinship care set up and working requires legal advice, which costs money. Some of the people who want to do kinship care, haven't got the money. So where does it come from? So that leads me to the question which I still haven't really grasped the answer to, which is, what's the solution to this? Does the solution lie in getting local authorities to be more generous, to be more helpful? Does the solution lie in getting central government to allow local authorities or to help resource local authorities to be more helpful? Or do you require legislation to do this? Obviously, a big, big ask to do that. But it has been done for other things. Is that the direction in which we should be going?

HM - I feel compelled just to respond in respect of the potential option for local authorities to fund this. Obviously local authorities are facing a funding crisis in social care and the levy being a prime example of that. And obviously the COVID costs that have hit. The funding arrangements for local authorities have changed. The situation is not brilliant for local authorities so they can't be consistently called on to find money from elsewhere, which inevitably then would impact on some other form of service for something else as well. These are really hard decisions.

CM – I completely agree with what Helen has just said. In actual fact, what I said about investment across the whole of the family justice system is an absolute essential because of the cuts to court sitting days, because of the sell-off of the courts, because of cuts to legal aid, and because of various societal factors, we've seen a tsunami of care cases, which have left very little time and very little court sitting time for private family law cases. That's something that needs to be addressed because even if these kinship care were to be given funding to take these cases to court... I've got a case, which started in 2020, I think we've had three hearings and we're not going to have a contested hearing until the middle of June 2022. This is a case where these children have not seen their mother since February 2020. This isn't because the courts are at fault. They're doing their best to list it. It's because of incredibly busy court diaries, and insufficient funding.

SW – Can I also just mentioned that in terms of local authority funding for advice, there's persistently problems with it being not independent and fair. We're parties to a lot of these proceedings, or even in complex private proceedings brought in to assist the court, and in those circumstances, it just seems that they're not really being given the parity of arms to really argue their particular case, and have other people speak for them.

Q7, Baroness Armstrong (BA) - Thank you and hello to everyone. I think we're in a real crisis. That's easy to say, isn't it? But actually, the reality is, this is not going to be a priority for the government at this stage. This is not going to be a priority for public funding. Public funding for local government, I think is going to be squeezed even more, because of the commitments the government are going to have to make to defence. My Committee in the House of Lords, the Public Services Committee, is looking at workforce, and what is the workforce for the public sector for the next period in our life? What does that need to look like? And most professions and most organisations are simply arguing for more people. Well, we're not going to be there. We're going to have to work smarter and use technology in new and different ways. And I really want to say to the lawyers, is your profession thinking this through because the amount of money that the system has to spend on the legal proceedings is one of the reasons carers get nothing. We have to take hold on what is going on, and find new ways forward, which protect, first and foremost, the rights and the opportunities of the children.

I hear what the local authorities are saying. They are terrified that they're going to end up in trouble. We've ended up with a childcare system that has been driven by bad cases in our history. Rather than starting from a different position, how do we actually get a system which works in the interest of children? I would get rid of this nonsense, that the state is in loco parentis, because if they are, we make a very bad job with it. And in the European countries that I've had a look at this in, they basically say the state is the bridge between what's gone wrong and what the opportunities can be. So I think that we as legislators need to have a really serious think about what we want the care system overall to look like. For me, as an ex social worker, I never met a family where the child, it didn't matter how dysfunctional the situation was, where the children did not want to know what was going on in the family and have contact with them. So we need to recognise that that's a starting point and how do we then build on that.

But the real challenge to the legal profession is, how do you reconfigure yourselves for what is coming down the road and what is there now which has been highlighted by COVID, but is absolutely going to continue with us, certainly for the rest of my lifetime and I recognise that's not very long in terms of the children we're talking about, but we've got to have some really serious thinking about reconfiguring and redoing things because these kids are just getting a raw deal at the moment, as are the carers.

AG - You make some very important points because the system isn't working. We can tinker around with the system at the edges or we can look at it fundamentally and look at how can we improve it for the interests of the child?

CM - In answer to Hilary's questions to us as lawyers, how are we going to reconfigure? From about the early 90s when legal aid franchises first came in and certainly since 1995, we've had no increase in legal aid pay, in fact we've had a reduction in legal aid. We have been cut to the bone. We have become as efficient as we possibly can be. We're using new technology. We're doing everything in our power to make this work. And yet we've still had the Bellamy report saying that legal aid is unsustainable. I think we're doing our bit. We're doing pro bono work which we can't really afford to do but because we think it's important in specific cases. It's just an unsustainable system. We cannot improve on ourselves anymore. We really can't.

BA – I need to talk to you about that because I've got one or two ideas, Cris. Yes, you're right, the system needs changing. But we've got to be prepared for people in different roles to.

HM - On the point of succession and looking forward, local government lawyers have been concerned for some time about succession planning within the profession. We know the average age of the local government lawyer is getting older and older and older. We've got this real dearth. We are looking at ways to address that through initiated graduate recruitment schemes and things like that in order to attract people and retain people in the profession. That's the challenge that we face in this sector. But we have moved forward quite a lot in local authority technological capabilities. But there have been frustrations with not being able to access digital case management systems, or the way in which you deal with court bundles. That has presented quite a bit of challenge to the local authority sector, which we are trying to overcome. We are in talks with the Ministry.

Q8, BD – I think it was Samantha's point about the legal aid reform providing an unintentional bias against kinship care to the disadvantage of children. When we were fighting the two child limit imposition on kinship carers, we did get together a lot of data, which was very persuasive about the saving to the taxpayer of children going into kinship

care rather than other forms. I wondered if there was any evidence we can pull together on this unintentional bias point, whether there's any way you can help us because these things are quite important when you're trying to mobilise the case? That's the first one. And the second one, the impact of the court backlog on care proceedings for children because that issue is coming up in about two weeks in a debate here on a report that we did on that. I think Cris you did come and give us evidence. It would be good to have some evidence on that as well and what your feeling is on that because there is an opportunity on the court process on the backlog and the access to justice to raise some of these issues if you've got some good data and arguments we can use.

CM - Certainly I collated a lot of data for when I gave evidence to what's now called the Harm Report and I can make that available. It's anonymized and it's on a case by case basis. But it does, I hope, illustrate what the difficulties are and what the issues are. I think the main issue with private law proceedings in the family courts is that there just isn't sufficient time because the court diaries are absolutely stuffed full. And quite rightly, they are prioritising cases where, and it's always said to be the most draconian thing a court can do, which is to remove children from their family of origin and take them into care. So those cases are given that priority. It is meaning that we are waiting sometimes years to get cases, heard before a family court and finalised before a private family court. That's obviously a huge concern. But yes, I'm very happy to let you have the data.

BD - That would be great, because the debate is coming up in about 10 days. Thank you.

SW - Can I share that for the local authorities, the delays in court are also having direct impacts on decision for children where they don't have kinship carers and are looking at adoption. The delays have got to such an extent that some of those children will lose the opportunity of being adopted because they can't have an order in time. So those are the prioritisations that we're having to set now to try and make sure that those children don't have their lives fundamentally changed before they've even had the opportunity of a decision.

SL – It's a slightly off point. There would be one simple, and it wouldn't cover all situations, but if we if the legislation was changed to allow parents to share parental responsibility with kinship carers by agreement, rather than going to court because at the moment, the only way a kinship carer can get legal responsibility is to go to court. If we could extend the legislation so that parental responsibility could be shared, it won't cover every situation, because a lot of parents won't want to agree or they can't make that decision, but that could give some kinship carers parental responsibility, which would go some way to at least giving them status and decision making ability, which could help. That would be an amendment to the Children Act that would be needed to do that.

6. Closing remarks from the Chair

AG - Can I thank all guests today. Cris, Samantha, Helen and Sarah, for your important contributions and for sharing your experiences with us helping to inform our inquiry. You've given us a lot to think about.

Our survey of kinship carers facilitated by the Family Rights Group remains live and I encourage colleagues and anyone present to share with your networks. The more information we get the better informed our inquiry will be.

The APPG is also continuing to invite written submissions until 4th April. Over the coming weeks we'll be working on our report and compiling recommendations. We look forward to publishing those later in the Spring.

I think it's been a really good informative session. So thank you very much to the parliamentarians for your important support, and also, once again, to our guests and to the Family Rights Group for facilitating the meeting.

Meeting ended 14:40