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Submitted to Law Commission consultation on kinship care (consultation paper)
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About you

What is your name?

Please tell us your name below.:

Samantha Little

Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Response on behalf of organisation

If other, please state::

What is the name of your organisation?

Please tell us the name of your organisation below.:

Resolution

I am responding on behalf of Rachel Rogers, Head of Policy at Resolution

I am a children lawyer and a member of Resolution.

Resolution is an organisation of 6,500 family lawyers and other family justice professionals in England and Wales, who believe in a constructive, non-confrontational approach to family law matters. Resolution also campaigns for better laws and support for families and children undergoing family change. Our members have a strong interest in improving access to justice for the families they work with on a daily basis.

What is your email address?

Please tell us your email address below.:

Rachel.Rogers@resolution.org.uk

Which of the following categories would you consider apply to you? (please tick as many as applicable)

Organisation – representative/membership

Anonymity and confidentiality

No

No

If yes, please explain why you would like your responses to be treated as confidential.:

Chapter 3: Key concepts and definitions in kinship care

Consultation Question 1

Yes

If you wish to, please give reasons for your answer below.:

This is agreed and seems sensible.

We have two comments to make.

The first is whether difficulties will arise in defining "most of the time" or "more of the time" and whether this will need greater clarification.

The second point is how relative is defined.

Consultation Question 2

Please share your views below.:

We do not consider that all children in kinship care should automatically be considered as "children in need". Many arrangements will not fall into this category and to require them to be so, places more burdens on the family in question and/or the local authority. What should be made clear is that if a kinship family seeks help at any stage, they should be assessed for support and should receive the support they need (see later comments).

Chapter 4: Special guardianship

Consultation Question 3

Yes

If you wish to, please give reasons for your answer below.:

We consider this would be very helpful, as long as it's made clear in what circumstances it could apply. We would suggest it could only be used in cases where there was a realistic possibility that a final SGO would be made. Having the option for an interim order would allow time to test out a placement, which currently has to be done under either an ICO or a CAO or no order. In some cases these options are not suitable. It may also be helpful for the interim order to be available in private law proceedings.

Consultation Question 4

Please share your views below.:

Consultation Question 5

No

If you wish to, please give reasons for your answer below.:

Please note our answer of "no" applies to point 1 not point 2 (the consultation response sometimes has two options and ideally we need a "yes/no" answer option to both parts)

1. We do not consider the Court should be required to consider the potential for the reunification. We have taken this to mean reunification in the future. In both public and private law proceedings, the Court is already considering when making the SGO whether the parent can care for the child and only makes the order when it has confirmed a child cannot be cared for by their parent. There is already a mechanism for a parent to seek to vary or discharge the SGO and seek reunification.

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

Consultation Question 6

Please share your views below.:

1, We do not consider a review date should be attached to an SGO. When making an SGO the court undertakes a thorough process of evaluation. The SGO can already be challenged by a birth parent if circumstances change. Introducing a review date creates uncertainty for the child and their carers and the parents might attach expectation that is not appropriate to the review. We cannot see how this would work in practice. Would legal aid be available for the review?

2. N/A in light of the answer above

Consultation Question 7

Yes

If you wish to, please give reasons for your answer below.:

This goes to the heart of our concerns about the situation for kinship carers. One of the most significant issue for all kinship carers that we see arising is the lack of support including in relation to contact and the lack of the ability to compel the provision of this support coupled with the lack of resources to actually provide support.

The Local Authority is usually very keen in most cases to pass on the responsibility for managing contact to the special guardians leading to concerns about risk to the security of the placement. There are particular difficulties when contact needs to be supervised and the Local Authority cannot provide resources for supervision and the family are not able to do this. We recognise the pressures that Local Authorities are under but the reality for many kinship carers is the lack of support for contact arrangements is a real difficulty.

We are also concerned that there is very little availability and resource to provide legally aided mediation, including legally aided mediation for kinship families. We are aware that submissions will be made by mediators about the value of mediation in kinship families and why more resources need to be made available. We support those views. We consider in particular that legally aided mediation services should be more available to help kinship families.

Consultation Question 8

Yes

If you wish to, please give reasons for your answer below.:

We cannot see a difficulty with this proposal noting that it is only consideration of whether the order should be made and that a section 91(14) order can only be made when justified.

Consultation Question 9

Yes

If you wish to, please give reasons for your answer below.:

The Local Authority should investigate all all kinship carers whether they are in this country or overseas. This is consistent with ensuring that children can grow up in their family if possible

Chapter 5: Private law orders in kinship care: section 8 of the Children Act 1989

Consultation Question 10

Yes

If you wish to, please give reasons for your answer below.:

We agree that kinship carers should be able to apply for a CAO without leave if they have cared for less than a year. If it thought that there should be a qualifying period, we would suggest it is far less than one year, perhaps 28 days.

Consultation Question 11

No

If you wish to, please give reasons for your answer below.:

We do not think the length of the order can be tied to a possible reunification as things change in the future – how can this be predicted at the time the order is made? If the court is making a CAO to a kinship carer, there will have been a process to understand if the birth parent(s) can look after the child and there is a need for certainty and finality.

In addition there are mechanisms to discharge and/or vary a CAO

Consultation Question 12

Yes

If you wish to, please give reasons for your answer below.:

We cannot see a difficulty with this proposal noting that it is only consideration of whether the order should be made and that a section 91(14) order can only be made when justified.

Consultation Question 13

Please share your views below.:

N/A

Consultation Question 14

Please share your views below.:

We are a bit muddled by this as the Child Impact Report is the report used in the new Pathfinder/Child Focused Court and this is not yet in every court area.

We consider that in a CAO case for a kinship carer, the Court must consider if a section 7 report would assist the Court make the decisions and understand the needs of the child. It will not be necessary in every case but we would suggest in most cases, not least to advise on contact for the child with their parents. The question for the Court will be whether it is the Local Authority or CAFCASS who undertake the s 7 report. We consider it most helpful for the Local Authority to provide the assessment.

Consultation Question 15

Please share your views below.:

The only additional matter is that relating to contact and whether there should a specific requirement to consider the relationship with and contact between the child and their parents. It's possible to argue that parts of the existing welfare checklist would cover it but it's not specifically referred to in the checklist (as it is in the Adoption and Children Act 2002 checklist) and it might be helpful if it were to be included.

Chapter 6: Kinship foster care

Consultation Question 16

Please share your views below.:

1. We consider this to be a question that requires detailed input from those who are familiar with fostering regulations. However we are of the view that whether there is a different set of fostering regulations for kinship carers or whether the current fostering regulations are amended to include some flexibility for kinship carers, there does need to be some amendment. We consider there are different standards for a kinship foster carer caring for a particular child in their family and for a foster carer caring for any child, not related to them. Certain standards that a non relative foster carer may have to achieve may not be relevant and other factors e.g. age and health, may need to be considered more flexibly for relative foster carers. This is a real problem in cases where a kinship carer is caring for a child under an ICO and does not receive fostering approval and the placement then becomes unregulated. There needs to be flexibility in the fostering assessment process for kinship carers whilst ensuring the assessment remains robust.

Consultation Question 17

Yes

If you wish to, please give reasons for your answer below.:

Yes as this will ensure that all the relevant factors are covered.

Consultation Question 18

No

If you wish to, please give reasons for your answer below.:

The current frequency of visits is the right level and safeguards the child. The people conducting the reviews can consider the depth of the review according to the situation but it is best to have a single set of rules for review, as we do currently. We would also suggest that most placements (although not all) under a care order, have a higher level of need and possibly the children have additional needs and therefore it would not be right to reduce the level of visits.

Chapter 7: Informal and private fostering kinship care arrangements

Consultation Question 19

Yes

If you wish to, please give reasons for your answer below.:

Yes we consider this a helpful proposal.

We ask though if this would lead to concerns about kinship carers not being properly assessed as many times the reasons the kinship carer applies for an order is to get PR and if there was agreement to share PR, the case would not reach the court.

Has there been any way to work out how many people might opt for this solution rather than apply to Court? Is it possible that this proposal might lead to reduced applications for CAOs or SGOs?

There may need to be consideration when looking at this proposal of the use of delegated PR (Section 2(9) and section 3(5)).

Consultation Question 20

Yes

If you wish to, please give reasons for your answer below.:

We would like to see proposals to ensure that those entering into these agreements understand what they are doing. Please see our comments at the end of the response about access to legal advice.

Consultation Question 21

No

If you wish to, please give reasons for your answer below.:

This is a difficult question - our concern would be that the kinship carers and parents entering into the PR agreement may not understand that what enhanced PR means, and we don't see how they would be made aware of this. If some safeguards were introduced, and access to advice and information given, it may be helpful to have enhanced PR through an agreement route but it may be better for anyone seeking enhanced PR to apply to the court for an order.

Consultation Question 22

Not Answered

If you wish to, please give reasons for your answer below.:

1. yes, we think any kinship carer should be able to enter into a PR agreement.

2-4 - yes we agree.

Consultation Question 23

Yes

If you wish to, please give reasons for your answer below.:

1) the date of receipt and recording at the CFC will be different so we need to specify which. We think it should be the date it is recorded – in case the CFC note any deficiencies in the agreement e.g. there is already another PR agreement with another kinship carer.

(2) (a) yes

(b) yes

(c) yes

(d) yes

(3) no particular view

Should there be provision for an application on behalf of a child through their guardian to apply to discharge the PR order?

Should the court be able to discharge it of its own motion?

Consultation Question 24

Yes

If you wish to, please give reasons for your answer below.:

1) in principle yes but it's very hard for the general public to access these people and make appointments given the lack of counter service and difficulty getting through to anyone in the court service. How is the appointment to be made to do this?

(2) yes

(3) yes

(4) this is going to be difficult to evidence –this will be presumably be based on the fact that the parents are agreeing to share PR and the kinship carer confirms they meet the criteria. What evidence would be acceptable?

(5) yes

(6) yes

(7) yes

We need to consider what will happen where a parent or someone with PR has died and whether evidence of that death will allow the agreement to be entered into.

It needs to be understood with this proposal that there may not be many cases where all the people with PR can attend court and sign the agreement e.g. a missing parent who is on the birth certificate or a parent who is in prison or is otherwise incapacitated . This option of a PR agreement may not in fact be possible in many cases.

Consultation Question 25

Please share your views below.:

Consultation Question 26

Please share your views below.:

Consultation Question 27

Please share your views below.:

Chapter 8: A bespoke kinship care order

Consultation Question 28

No

If you wish to, please give reasons for your answer below.:

Generally speaking we remain unsure about whether we need a new kinship care order. We have SGOs and CAOs and Care Orders and they work well overall. The main issues kinship carers report to us is the lack of support and lack of access to legal advice and we do not see how a new type of order will assist with those concerns.

If we had the ability to have an interim SGO, that could assist in many cases.

We ask also would SGOs be left on the statute books – would kinship carers be able to apply for those (we think the consultation suggests not)?

Would kinship carers be able to apply for CAOs (we think the consultation suggests not)?

Would SGOs mirror KCOs? If so, SGOs would not be used very much at all, just for foster carers?

If we have one though, we think yes the welfare should be the court's paramount consideration and the checklist should apply.

Consultation Question 29

Yes

If you wish to, please give reasons for your answer below.:

However we think a kinship carer should be able to apply with leave if they have cared for the child for less than 28 days

Consultation Question 30

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 31

Yes

If you wish to, please give reasons for your answer below.:

It is common for two people to apply, e.g. grandparents and this should be allowed. In some cases a KCO might be made to three people, e.g. the grandparents and an aunt or uncle who will assist and support the grandparents and will be able to care for the children if the grandparent becomes unwell or dies.

Consultation Question 32

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 33

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 34

No

If you wish to, please give reasons for your answer below.:

We do not consider this should be a requirement

The Court can already decide if a particular aspect of PR is to be managed in a certain way. Having an obligation to review the operation of PR to consider in every case will be complicated and may take up more time in Court and lead to restricting the kinship carer unnecessarily.

Consultation Question 35

Yes

If you wish to, please give reasons for your answer below.:

We assume it is intended to mirror the enhanced PR that there is with an SGO.

Consultation Question 36

Please share your views below.:

No, we consider that the kinship carer should have enhanced PR if they are caring for the child

Consultation Question 37

Yes

If you wish to, please give reasons for your answer below.:

This is a permissive provision not a requirement and we can see it might be helpful.

Consultation Question 38

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 39

Yes

If you wish to, please give reasons for your answer below.:

This is very important. But we make the point again that there are significant concerns that kinship carers are not given sufficient support or resources to manage contact often leading to pressure on the placement, the child not seeing their parent as they should and possible breakdown of the placement. This is particularly the case when supervised contact is needed on a long term basis.

Consultation Question 40

Please share your views below.:

No this should not be there. In these cases the court has decided the child's parents cannot care and that is why kinship is being considered so this rebuttable presumption would conflict with the purpose of the proceedings.

In addition the Government has said it's going to repeal the presumption brought in to the Children Act 1989 by the 2014 Act so it would seem odd to have it included here.

Consultation Question 41

Yes

If you wish to, please give reasons for your answer below.:

The order should record the actual support to be offered as well as what was assessed and attach the plan. This is very important, particularly in cases where the child has a level of additional needs, which is very often the case in kinship care.

However we make the point that even recording what support has been assessed and is to be offered, there is no guarantee it will be provided.

Consultation Question 42

Please share your views below.:

This should be the same as for an SGO but in our view, a kinship support assessment should be undertaken in every application for a KCO whether or not the child is a looked after child before the KCO was made or not.

It is particularly important to carry out an assessment of support when the child has additional needs.

It is also important to ensure that if a KCO is introduced, that the kinship carers can access the Adoption and Special Guardianship Support Fund. Information about this fund and how to access it should be considered as part of a support assessment.

Consultation Question 43

No

If you wish to, please give reasons for your answer below.:

The order should last until the child is 18 unless brought to an end by the various legal mechanisms available. Otherwise there will not be sufficient certainty to the placement which may impact upon the child.

Consultation Question 44

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 45

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 46

some other period.

If you wish to, please give reasons for your answer below.:

The Court should be able to make a KCO for the duration of the proceedings, however long they are and there should be no restriction.

Consultation Question 47

Yes

If you wish to, please give reasons for your answer below.:

A child should be able to apply through their guardian as well

Consultation Question 48

Yes

If you wish to, please give reasons for your answer below.:

We cannot see a difficulty with this proposal noting that it is only consideration of whether the order should be made and that a section 91(14) order can only be made when justified.

Consultation Question 49

Yes

If you wish to, please give reasons for your answer below.:

It will be important to ensure that how PR is shared will be discussed and set out in an agreement or order.

Consultation Question 50

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 51

Please share your views below.:

We don't agree reviews should be possible

The prospect of a review will lead to uncertainty and challenge and parents may have unrealistic expectations of the review. We also do not see how such a mechanism would work - would legal aid be available?

Consultation Question 52

Please share your views below.:

It would operate in the same way as CAOs and SGOs except that we would need to understand that other countries may not recognise or understand the KCO. The KCO would need to be clear and set out what it means and set out the provisions for PR so that advice would be sought from overseas countries about the validity and acceptance of those orders.

Problems could be avoided by obtaining good advice at the outset about the country in question and the laws and provisions of that country

Consultation Question 53

Please share your views below.:

Consultation Question 54

Please share your views below.:

We consider the requirements for the KCO report should be no less than for an SGO

Consultation Question 55

Please share your views below.:

The child would be represented if within public law proceedings so their view would be heard.
In a private law cases the person undertaking the KCO report would speak to the child.
In addition the child would be spoken to during the assessment process.

The Court should also have the power to join the child to a private law application for a KCO

Consultation Question 56

Please share your views below.:

1. No
2. The court should consider if the kinship guardian should be a party. The Kinship Guardian should have access to legal advice about this.

In public law proceedings, it should be noted that if an interim KCO is made, this would mean the kinship carer has PR and would be a party to the proceedings.

Consultation Question 57

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 58

No

If you wish to, please give reasons for your answer below.:

A PSO or SI order could be needed and applications should be permitted if a KCO is in force.

Consultation Question 59

Yes

If you wish to, please give reasons for your answer below.:

But only if a KCO provides the same powers and protections as an SGO

Consultation Question 60

No

If you wish to, please give reasons for your answer below.:

We think a kinship carer might still want to apply for a CAO and should be able to.

Consultation Question 61

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 62

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 63

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 64

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 65

Yes

If you wish to, please give reasons for your answer below.:

Consultation Question 66

Please share your views below.:

Please see comments at the end.

Consultation Question 67

Please share your comments or views below.:

Please see comments at the end.

Chapter 9: Impact considerations

Consultation Question 68

Please share your views below.:

Please see our answer to question 70

Consultation Question 69

Please share your views below.:

Please see our answer to question 70

Additional comments

Consultation Question 70

Please share your views below.:

We are pleased to have responded to this consultation (we have left a few questions blank where we consider others are better placed to answer).

We have seen a draft of the Law Society's response and broadly endorse their submission. We note they also have a similar view to us on the need for a new order.

Kinship carers are a disadvantaged group as are the children in their care. Our members are very concerned at the lack of support - practical and financial - that kinship carers receive and in particular about the struggles they have with contact, especially when supervised contact is needed.

We need kinship carers and we have to support them better, not least as children deserve to grow up in their family and the fostering system would not be able to look after all children if kinship carers did not exist. We have heard in the last week during kinship week of the challenges faced by kinship carers.

We understand that the Consultation cannot look at the issues of support and resources but we make the point again that for most kinship carers, the issue is not a problem with the legal orders, the issue is about support and legal advice. We consider that CAOs, SGOs and COs meet the needs for orders well at the current time and cannot see that a new order is needed. That said, we can see that an interim SGO would be helpful.

Given the focus on kinship care that this consultation will result in, we hope the Government will take this opportunity to review the support for kinship carers.

We are particularly concerned that kinship carers are often caring for children who have suffered abuse or neglect and/or may have additional needs. They are left struggling to care for the children they are looking after and are often just left to get on with it. Many kinship carers have children in their care who need specialist education placements but navigating EHCP processes and seeking specialist school places is very challenging and many kinship carers are left completely on their own.

The provision of support varies widely between Local Authorities with some providing better support than others. Each local authority pays differently and has a different approach. Much depends on resources.

We are very concerned at the lack of legal assistance for kinship carers and birth parents (particularly in CAO cases where parents are unable to satisfy the gateway criteria to obtain legal aid and may find themselves unable to challenge a CAO by a kinship carer).

Many kinship carers need advice about orders and PR and the process of applying. They also need help with applying to Court. They don't have the funds to pay for legal advice and representation - often they will not have income from work and whilst they may own a home, they will not be easily able to raise funds without having a regular income. It is also the case that kinship carers are generally struggling to financially support the children in their care in any event and there is simply not enough money for legal advice.

In terms of access to legal advice, we would advocate for an early advice scheme to cover all parties in a kinship situation. However the funding needs to be higher than the existing legal aid rates. We make the general point that legal aid lawyers are already unable to provide advice to all who need it and the supply of legal aid lawyers is diminished due to the failure of successive Governments to invest in legal aid (the Commission will be aware of the Access to Justice Committee report published in the summer of 2026) . We have many kinship carers who call us and want to seek advice on kinship and/or challenge an assessment and we cannot help them all. Some local authorities provide limited funds for advice but it rarely covers what is needed. We have previously worked with the Family Rights Group to produce a paper on the need for kinship carers to have better access to legal aid for advice and representation. We can supply that paper if this has not been provided to you.

We also want to stress the importance of a proper legally aided mediation provision. Mediation could assist kinship carers and parents particularly when orders have been made and difficulties arise. At the moment legal aid only provides for two participants and most cases have more than that when there is a kinship placement. Providing legal aid for mediation and funding that process would mean a lower number of breakdown of placements and also ensure that children see their parents as they should and the kinship carers would be better supported.

Resolution members are lawyers who regularly support and act for kinship carers, parents and children in public law and private law proceedings. We would be happy to meet further with the Commission if that is helpful