

Written evidence submitted by Family Rights Group (ATJ0149)

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About Family Rights Group

Family Rights Group is the leading specialist charity working to ensure children can live safely and thrive in their family, and children in the care system have loving relationships they can turn to throughout life. For 50 years, we have worked to shape the child welfare system to make that a reality. We are unique in bringing together legal and social work expertise with the direct voice and insights of young people and families. Our work includes:

- i) **Advice and advocacy:** A national specialist advice service primarily funded by the Department for Education – staffed by lawyers, social workers and experienced family advocates – providing free, independent and confidential advice to help parents and kinship carers involved with children's services to understand child welfare processes and their rights and options. It provides a real time insight into families' experiences and the challenges in the system. In the last financial year the service answered over 7400 calls and enquiries.
- ii) **Pioneering family-led solutions:** We champion innovative family-led solutions and partner with local authorities, other agencies and academics to embed these. We introduced [family group conferences](#) to the UK. We developed the groundbreaking [Lifelong Links](#) approach, which is designed to ensure that children in care and care leavers have a positive, lasting network they can rely on. Over 4000 care experienced children and young people have benefited from this and it is offered in over 40 local authorities.
- iii) **Influencing law and policy:** We are a leading authority on child welfare law, policy and practice. We have successfully pursued law reform proposals and led campaigns, informed by research and the perspectives of children and families with experience of the system. We have secured legal aid reforms improving access to justice for families.
- iv) **Championing kinship care:** We are the legal and policy specialists on kinship care, working to ensure more children can remain safely in their family. Our record in securing changes to legislation, policy and practice in this area is unequalled. We service the All-Party Parliamentary Group on Kinship Care and the Kinship Care Alliance.
- v) **Amplifying family voices:** We promote families' voices, expertise and insights in all our work. We support mothers, fathers, kinship carers and care-experienced young people to be heard by policy-makers, practitioners and the public.

Summary

Family Rights Group welcomes the Justice Committee's inquiry into access for justice. We have responded to questions posed only where we have particular specialist knowledge and evidence to contribute - **questions 1- 4, 6 and 8 and set out some clear recommendations**. Our submission focusses on matters of access to justice for families of children who are, or who have been, involved with the child welfare system.

There are 83,630 children in the care system in England. They are often isolated and alone, living far away from family and friends. The Independent Review of Children's Social Care projected that the number of children will exceed 100,000 by 2032 without a significant change of course. The system has become too focused on investigating and assessing rather than supporting families, meaning many opportunities to work in partnership with families early are missed. Children and families are frequently not getting the help they need early enough to prevent difficulties escalating. Whilst poverty and deprivation are making it harder for families to cope.

The result is a system which is overstretched and overwhelmed, where more families are struggling without help and increasing numbers of children are in care. More children could be raised in kinship care, with grandparents and other family or friends who know and love them. Research shows this leads to better outcomes for children compared to living with strangers in the care system. Yet kinship care is not consistently explored and too often is undervalued and unsupported. Many (prospective) kinship carers need legal help but are unable to access legal aid, left instead to navigate a complex system alone, without understanding of their rights and options.

Families have a key role to play in safe and appropriate plans for their children being drawn up. The importance of family involvement where the state makes decisions relating to their child is reflected in the underlying principles of English and Welsh legislation: partnership working and co-production (respectively) between the state and children and families. Statutory guidance [Working Together 2023](#) states that successful outcomes for children “depend on strong partnership working between parents/carers and the practitioners working with them.” But partnership working relies on families and children being informed, able to understand their rights and options and the processes they are part of.

Early information and advice, from both legal aid providers and from the voluntary advice sector, helps prevent difficulties from escalating, can help to avert the need for care proceedings and help address the very high numbers of children entering the care system. As the 2017 Care Crisis Review facilitated by Family Rights Group, heard, advice including specialist legal advice is:

“...important all stages of involvement with children’s services, so that people can understand better the concerns of agencies, know the options available to them, and be helped to reduce or resolve any conflict with professionals about what will be best for their children. It was described as being of crucial importance in the early stage of involvement, including for child protection conferences – not only for the sake of justice, but because care proceedings can be, and often are, avoided if parents have help to understand their rights and options and to work with the local authority to prevent problems escalating.”

Legal aid for early-stage advice for parents when children’s services become concerned with their child is however very limited. We know that families find it extremely difficult to obtain ‘legal help’ advice, to enable a solicitor to help them navigate the early stages of children’s services’ involvement, or to understand their rights and options outside of court proceedings. The specialist voluntary advice sector is underfunded despite being well-placed to provide early-stage support. This means that at the times when critical decisions are being made, many parents simply do not have the information and advice they need about their rights and options and those of their child. Children’s limited access to independent legal advice at such stages, and when they are looked after in the care system (outside of ongoing court proceedings), is similarly of concern. Government has previously invested in a number of early advice pilots, including in respect of private family law matters. There has however been no such pilot focusing on early-stage advice in respect of children public law.

Family Rights Group is calling on the Government to ensure children and families can access independent specialist advice and legal aid across the continuum of involvement with the child welfare system, and that this is adequately funded.

Question 1: How does the current state of the legal services and representation market in England and Wales, and associated operating pressures, affect access to justice for clients?

Low legal aid rates together with the impact of means and merits tests are adversely impacting on the provision of legal services for those who cannot afford to pay for legal advice and representation privately. Families find it extremely difficult to obtain 'legal help' advice, to enable a solicitor to help them navigate the early stages of children's services' involvement, or to understand their rights and options outside of court proceedings and formal pre-proceedings processes. Too often they are left to navigate the system alone.

Our response to this question focusses on three factors underpinning the difficulties families face in accessing justice:

- i) Availability of high street providers and impact of low legal help rates
- ii) Impact of the means
- iii) Impact of the merits tests.

i) Availability of high street providers and impact of low legal help rates

Last year, Law Society [research](#) found that civil legal aid work is loss making for most providers. This is reducing the number able to stay in business, or continue to offer services funded by legal aid. In relation to family law the Law Society found:

- "The median family legal aid provider in the sample only reached their break-even point and were not able to make any profit."
- Providers in the bottom 25th percentile of profitability reported losses of more than £55,000 per year with translated to a loss of almost of £13,000 per full time fee earner.

Firms are under considerable financial strain and there is a reducing number that can stay in business, or offer legally aided funded services. The number of practitioners wanting to remain in areas of law which are typically funded by legal aid, including public children law, is also affected. Of those doing this work, many are unable to provide 'early stage' advice consequent to the very low remuneration rates for Legal Help that apply. Parents, wider family and (prospective) kinship carers of children who are involved with the child welfare system, may find that there is no local provider able to offer them the early-stage advice that they need. This may make accessing timely, or any, advice more difficult still.

Legal helps are the type of legal aid that may be available to children and families outside of court proceedings. For example, at the early stages of children's services involvement, prior to any application for a care order being made. Or after proceedings have concluded, and an order might be in place and children and families require advice about care planning or contact. There are different types of 'legal helps' available for family matters, depending on what the case involves.

Legal help is a form of 'controlled work'. This means that those providing the legal advice (normally solicitors' firms) must carry out any required assessment of the person's means and merits themselves and claim the appropriate fee, without the Legal Aid Agency's involvement. Providers regularly have their controlled work audited by the Legal Aid Agency however, who can recoup claims they consider to be incorrect or put notices or sanctions on providers' legal aid contracts.

The fees for civil legal aid legal helps in are set out in Schedule 1 of [The Civil Legal Aid \(Remuneration\) Regulations 2013](#). For the purposes of this submission, the most relevant ones are: Public Law level 1, Private law level 1 and Family help (lower) (level 2) public law.

Many high street providers doing public children law work are not able to provide level 1 help because they will be operating at a loss if they do. This is because of both the low fees which apply and the time and work involved in conducting the means test required to assess a client's eligibility for accessing level 1 legal help. The number of hours work involved outweighs the amount the firm will receive in payment. Available data confirms a drop in the number of legal help claims firms are submitting.

Table 1: Legal helps: type, fee and number opened in 2023-24 and 2024-25:

Type of legal help	Fee	Number opened in 2023-2024	Number opened in 2024- 2025
Public law level 1 <i>Only form of legal aid available for children and families prior to the formal pre proceedings stage. It is also the only legal help available where applications for deprivation of liberty orders are contemplated. It is available for any public law matter which is in scope and to anyone who can pass the merits test. More information is set out below.</i>	£132	1,238 In 21 of these legal helps, the client was a child	1,266 In 27 of these matter starts, the client was a child.
Family help (lower) (level 2) public law <i>Form of legal help available to parents (and anyone with parental responsibility) during the formal pre-proceedings process –where children's services consider whether they need to apply to Family Court to commence care proceedings. Once the parents or anyone with parental responsibility have received a letter confirming the process has started, they are eligible for this type of legal aid</i>	£365	14,638	15,623

The legal help numbers were provided in response to a parliamentary question Family Rights Group assisted with the tabling in June 2025. The [answer](#) demonstrated that very few public law level 1 legal helps are opened each year (only 1,266 in 2024-2025).

These figures sit in the context of a wider trend of declining controlled work claims being submitted by family law providers:

- **Private family law** – the number of controlled work claims submitted overall between in 2018/19 was 8,394 and in 2022/23 was just 6,237. When compared to the very high numbers of private law matters before the Family Court, this figure is extremely low
- **Public family law** – the number of controlled work claims submitted in 2018/19 was 18,009 and in 2022/23 was just 14,401.

Source: [Annex C of the Review of Civil Legal Aid - Call for Evidence](#))

Public law legal help level 1: The table above shows how few of these public law legal help level 1 matters are being opened each year. Yet this is the only form of legal aid available to families of children

involved with the child welfare system at very significant junctures where enquiries and plans may be being progressed which could have live long consequences for child and family. Examples include where:

- A child may be, or is a [child in need](#) and they need to pursue or challenge an assessment of need to ensure a child and family get the help they need to support the child's health and development
- Where [child protection enquiries](#) are being conducted or a child protection conference is being convened and families need advice about the process and their rights and options.
- Where children's services propose that a child should enter the care, or remain, in system under a [voluntary arrangements \(under section 20 of the Children Act 1989, or section 76 of the Social Services & Well-being \(Wales\) Act 2014\)](#). A voluntary arrangement can be put in place without any court oversight. In 2017, Family Rights Group carried out a Knowledge Inquiry into the use and misuse of voluntary arrangements and found that there were substantial deficits in the provision of information and advice for parents and families in relation to the use of voluntary arrangements (see paragraph 5.5.4 of the [inquiry report](#)). The [Care Crisis Review](#) proposed as one its 'options for change' that parents need to "receive free legal advice and representation, equivalent to that available under a pre-proceedings process' (family help level, lower level 2) rather than the public law level 1.
- When [deprivation of liberty](#) proceedings in the Family Court are contemplated for a child. There has been a sharp rise in older children, those aged 10–17, entering the care system. Among those older children in the care system are the thousands deprived of their liberty by the Family Court. Some under secure accommodation orders, many others under High Court orders. Too often children deprived of their liberty are living in settings which do not meet their needs and are far away from their families and communities.
- [Care planning](#) and review for their child, including where their child might live or what education they receive, and who they should see or be in touch with. And in relation to reunification – returning home from the care system.

In only 27 instances was a legal help file opened for a child. This information was provided in [answer to a parliamentary question](#) which Family Rights Group helped table). This very low number raises serious questions about the extent to which children who are looked after in the care system have access to independent legal advice when they may wish to have it and need it. It is important to note that children cannot access Family help (lower) (level 2) public law so the numbers in the table above reflect the total number of children accessing legal help on public law children related matters.

Public law legal help level 2: Firms are similarly struggling to provide early-stage legal advice in public law even where work is remunerated at the higher level of family help (lower) (level 2). This is the rate that applies to advice and representation for parents with children subject to the formal pre-proceedings process. It allows a solicitor to offer advice and assistance, attend pre-proceeding meetings and negotiate with the local authority on their client's behalf. It does not cover legal representation in court proceedings. However, this type of legal aid offers still very limited payment for solicitors. The standard fee for this work is £365. Further, where pre-proceedings legal help files are opened, given the rates of pay it often falls to more junior lawyers and paralegals to advise parents and represent them at meetings with children's services. The drop in the number of solicitors offering advice at this crucial stage of work with a family, which has a view to averting care proceedings, is a significant concern.

i) Impact of means test

Many areas of legal aid are means tested. This is where the person's financial situation will be considered by the Legal Aid Agency as part of their decision as to whether they receive legal aid. The financial assessment has two elements: examining income and then examining capital. They both must be below a set level to pass the means test. If the person has a partner, their finances must be included in the assessment.

Legal aid means testing is a barrier to people accessing legal aid due to the Legal Aid Agency's very low income and capital thresholds. Many carers with far from comfortable living standards, including those living below the [Joseph Rowntree Minimum Income Standards](#), are excluded. The situations faced by two groups - (prospective) kinship carers and families of children who are, or may be, deprived of their liberty – provide stark examples of how the means test frustrates access to justice at critical points for families of children involved with the child welfare system.

Mean testing and kinship care

In 2022, the APPG on Kinship Care held an inquiry into access to legal aid for kinship carers and potential kinship carers, with Family Rights Group providing secretariat. The inquiry heard from hundreds of kinship carers across England and Wales. It also took evidence from leading legal practitioners and organisations in child and family law, and from non-for-profit advice services. The APPG published its findings and recommendations in a report: '[Lost in the legal labyrinth: How a lack of legal aid and advice is undermining kinship care](#)'. The report shines a spotlight on, and sets out proposals for addressing, the challenges carers and prospective carers face in stepping forward and navigating the family justice system, in England and Wales, to support the children they are raising to thrive.

The Inquiry found the means test that applies when kinship carers need to access legal help advice, or when they are joined as a party to care proceedings but do not have parental responsibility for the child, to be a barrier to many carers accessing legal aid because of the Legal Aid Agency's very low income and capital thresholds." The Inquiry recommended that the means test be removed for kinship carers to 'assist family and friends to get the legal advice and support they need to obtain the best outcome for the child.' Family Rights Group recommends reform of legal aid provision for kinship carers to address this and other anomalies and injustices in the legal aid system which prevent (prospective) kinship carers accessing the advice and representation they need. See QX below.

Means testing and deprivation of liberty

A parent whose child is subject to care proceedings is entitled to legal aid to fund representation. This is not means tested and only a low merits test applies. The same cannot be said where a children's services department is either contemplating or actually pursuing an application to deprive a child of their liberty. Whether the application is for a secure accommodation order or for an order under the High Court's inherent jurisdiction, the financial situation of parents and carers, and a more stringent merits test, will determine whether they receive legal aid. What this means practically for families is that they can go to court where a decision will be made about where their child should live and who can care for them, and they will receive full advice and representation. But they can go to court, where a decision about whether to detain and restrain their child will be made, and they have little chance of securing advice or representation. **Family Rights Group has called for this anomaly to be addressed alongside other details proposals for reform of the legal aid regime applicable where children are deprived of their liberty- for more information see [here](#).**

ii) Impact of merits test

The merits test involves the Legal Aid Agency determining whether the person wanting legal aid has been able to demonstrate whether they have sufficient merits in their case to justify being legally represented. Things to be considered when assessing a person's merits can differ depending on the type of legal aid. All areas of family law are subject to a merits test.

The merits test currently works in an overly complicated way in particular:

- Working out which merits test applies to which form of civil legal service is a very difficult task. If the merits test was streamlined and simplified it would make it easier to practitioners to assess merits and as a result feel more confident about taking on a client.
- The current merits assessment process can carry a lot of risk for the solicitor. There is always the chance that the Legal Aid Agency will not agree with their assessment of merits and not pay for all the work done.
- The merits test can also exclude some family members from receiving legal aid based on factors which do not negate their need for advice and representation. For example, merit may fall to be determined with reference to whether the individual has a position which aligns with that of another party, or likelihood of them succeeding in their case. This takes little account of that fact that an individual may need legal advice in order to fully consider their position and their rights and options. Nor does it take account of how positions may change and evolve over the course of proceedings in light of emerging evidence and evolving understanding of the needs of a child and family.

Question 2: What is the role of supplementary advice services in supporting access to justice?

Specialist advice services play a vital role in supporting access to justice for families. It is essential that there is adequate and long-term funding for not-for-profit independent advice, information services and advocacy services specialising in child welfare and family court law and practice. Properly funded specialist advice services can work alongside there being access to specialist legal advice and representation through publicly funded legal aid.

[Family Rights Group's specialist advice service](#) is free and independent and has a crucial role to play for families right along the child welfare continuum, including at the early stages of state involvement children and families. Advisers and our advice materials support parents, wider family members and prospective carers to understand their rights and options and to effectively participate in decision making. In doing so, the service helps to secure the right outcome for the child and leads to savings for the taxpayer from the costlier interventions avoided.

The service is regularly evaluated, using an impact model based on our theory of change, developed with New Philanthropy Capital. The most recent findings from [impact evaluation](#) of the service for 2024-2025 include:

- Estimated savings for the state of £32.40 for every £1 invested in the advice line
- 891,267 online visitors, including 504,712 visitors to online forums
- 7,456 enquiries answered, including telephone, webchat, email and forum responses
- Self-advocacy support provided to 578 families.

All this demonstrates that family are in need of advice and information, and Family Rights Group's advice service has to a key role to play in meeting that need. Yet, the advice service which is part-funded through a contract with the Department for Education, is overwhelmed with calls. Resource

constraints and rising demand meant that the charity is only able to answer four in ten callers. We are also very alert to how challenging the environment is to secure funding to run direct advice, advocacy, or representation services. Direct advocacy services commissioned by local authorities, including those previously run by Family Rights Group, have been forced to close due to funding cuts. The legal aid rates mean solicitors are not typically able, under legal help files, to attend, or provide advice in relation to, child protection conferences.

Advice for children who are in the care system or have children's services involvement with their family is similarly important. Examples include [Become](#) and [The Children's Commissioner for England](#) who both have supplementary advice services for children. There remains serious questions about the access children looked after in the care system have to legal advice and representation outside of court proceedings, and whether they are eligible to receive legal aid to fund this advice (see the table in Question 1 for the number of children accessing Legal Help level 1 public law). More consideration needs to be given to the interplay between their access to legal aid and advice, their need for specialist advice provision (such as that provided by the voluntary sector) and advocacy services for children who are looked after in the care system (something required under section 26A of the [Children Act 1989](#) and addressed in [statutory guidance](#)).

Question 3: What is the impact of those acting without legal advice and / or representation on access to justice?

Our response to this question highlights three ways a lack of access to legal advice and representation adversely affects access to justice for families of children involved with the child welfare system.

i. Impact on partnership working and early work with children and families

The importance of family involvement where the state makes decisions relating to their child is reflected in the underlying principles of English and Welsh legislation: partnership working and co-production (respectively) between the state and children and families. But partnership relies on families and children being informed and able to understand their rights and options. A lack of access to specialist advice, including legal advice and representation, affects partnership working at all stages - from initial children's services involvement, to drawing up and reviewing plans for children who are living in the care system. Without meaningful access to advice for families, there is significant risk that the original intentions of child welfare primary legislation regarding partnership working with children and families, are undermined.

The lack of access to information and advice can be seen particularly acutely at the early stages of children's services involvement as described in Q1 above. Working in partnership with, and supporting families from, an earlier stage is more conducive to a system in which children can be raised safely within their family network when they can't remain at home. In addition to better outcomes for children, strains on the care system and the Family Court would also be reduced.

Yet early-stage advice for parents when children's services become concerned with their child is very limited. We know that families find it extremely difficult to obtain 'legal help' advice, to enable a solicitor to help them navigate the early stages of children's services' involvement, or to understand their rights and options outside of court proceedings. Children's limited access to independent legal advice at such stages, and when they are looked after in the care system (outside of ongoing court proceedings), is similarly of concern. The specialist voluntary advice sector is underfunded despite being well-placed to provide early-stage support. This means that at the times when critical decisions are being made,

many parents simply do not have the information and advice they need about their rights and options and those of their child.

Family Rights Group is calling on the Government to ensure children and families can access independent specialist advice and legal aid across the continuum of involvement with the child welfare system, and that this is adequately funded.

ii. Family Court pressures

Pressures on and in the family court, and their impact on families and children, have been a concern for practitioners, the judiciary and government for several years. On 12 September 2025, the Public Accounts Committee published [“Improving family court services for children”](#) which explored the backlog of cases in the Family Court and states that children and families are “still waiting too long for family courts to resolve their cases.” The report highlights that in December 2024, there were over 4,000 children involved in cases which had been open for longer than 100 weeks and that in 2024 public law cases (including care proceedings) had lasted 36 weeks on average. This report has followed several initiatives to try to reduce the delay including, in relation to public children law proceedings, the [President relaunched](#) the Public Law Outline (“PLO”) in November 2022 through which the President of the Family Division hoped to reduce the length of public law proceedings and reaffirm the statutory limit of 26 weeks. The statutory provision permitting extension to this under [section 32 \(5\) The Children Act 1989](#) remaining important for those cases that cannot be concluded justly within 26 weeks.

A lack of access of advice and representation for families contributes to pressures in the Family Court in a number of ways, including:

- At the early stages of children’s services’ involvement, it means that opportunities for meaningful partnership working with children and families, and to provide the help needed to prevent problems escalating further can too often be missed. If families do not understand their rights and options it can be difficult for them to know what help and support, they could ask for, and harder still for them to raise queries, and bring constructive challenge where needed. This can make it harder to avert matters escalating to a stage where a court application may be necessary
- A lack of access to advice and information for families also means that opportunities for wider family to be explored may be missed. The APPG’s inquiry into kinship carer’s access to legal aid and advice heard *“the importance of kinship carers being clearly informed from the outset, for them to be able to understand the situation facing the family including the severity of the concerns and to be able to make a more informed decision about whether to step forward to offer to care for the child. This could also avert the need for more intrusive and costlier interventions further down the line, and smooth the progression of care proceedings where recourse to the court is necessary.”*
- [Evidence](#) has shown that where parties have to represent themselves (“unrepresented parties”) during court proceedings, this can make proceedings go on longer and cause delay to reaching a resolution. Court processes can be complex and confusing for those who do not have access to legal advice and representation to support them. For example, the purpose of hearings and rules surrounding submitting evidence. Proceedings may take longer than if parties were represented and had help to navigate procedures and court processes. As highlighted in this submission, too often families of children with children’s services involvement are having to represent themselves in matters relating to their children and families.

iii. Right to a fair trial

The [Human Rights Act 1998](#) applies to all public bodies and this includes the family court. [Article 6 of the European Convention on Human Rights](#) says that when determining a person's "civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing." And that a person has the right to "to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require." As set out in this submission there are significant barriers to people accessing legal aid in England and Wales. This leaves many family members without advice and representation both when children's social care services make plans and decisions, when court proceedings are contemplated and when proceedings are commenced.

In public children law matters, children's services are always represented but depending on the type of proceedings. the families whose lives will be most affected by whatever decision the court makes, are not. This is a significant imbalance in circumstances in which the decisions and plans being made can have lifelong consequences for children and their families. As highlighted in this submission, particular examples of the injustices regarding the limited access to legal aid that include the limited access to early stage legal advice for families of children involved with the child welfare system, lack of legal aid provision for (prospective) kinship carers have, and the lack of legal aid provision for families where children are, or may be deprived of their liberty by the Family Court.

It also appears to be in tension with the [overriding objective](#) of the Family Procedure Rules which is 'a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.' Ensuring that parties are 'on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence' is part of achieving this overriding objective. Where one party in court proceedings is unrepresented, the extent to which they can participate fully (and from an informed position) in proceedings is undoubtedly affected. This is relevant to the areas of public children law where families are unrepresented, and do not have access to advice before or during proceedings, but children's services are represented.

Question 4: Without impacting the public purse, what potential funding options would increase access to justice? e.g. an access to justice fund levy, conditional fee arrangements, third party funding. If limited funds were available, what would be the priority areas for spending?

Family Rights Group's overarching call is for Government to ensure children and families can access independent specialist advice and legal aid across the continuum of involvement with the child welfare system, and that this is adequately funded. Adequate investment in specialist voluntary sector advice services including in Family Rights Group's advice service is a crucial part of averting the need for court proceedings and addressing the high numbers of children in the care system.

Further priority areas for spending include:

- i. Increase in legal help rates to support access to early advice for families of children involved with the child welfare system
- ii. Legal aid where children are, or may be, deprived of their liberty by the Family Court.
- iii. Greater access to advice for (prospective) kinship carers.

i. Increase in legal help rates

As set out in response to Question 1, families struggle to access to advice and information at the early stages of children's services involvement. Legal helps are funded at such a low level that it means solicitors are either not able to take them on, or if they do are very limited in how much work they can carry out. Even at the higher paid legal help rate available when the formal pre proceedings stage is initiated, we are concerned the legal help fee remains too low and limits the quality and level of advice families receive.

We are concerned that without a fee uplift, the number of legal help files will continue to drop (see table in Question 1 above), and families will find it even more difficult to obtain the crucial early legal advice they need. A review of the rate at which legal helps (both levels 1 and 2) are remunerated at is long overdue. This should include ensuring the level 2 legal help is available for families where it is proposed that a child enter the care system under a voluntary arrangement.

ii. Legal aid where children are, or may be, deprived of their liberty by the Family Court

Whether, where and how a child will be deprived of their liberty are questions without straightforward answers. The relevant law is complex and the potential consequences for the child and their family significant. Access to legal advice and representation before and during any court proceedings is vital for:

- Families to understand what is happening and what their options are
- Families and children to be involved in planning for the child
- Ensuring fair process for the child and family is followed, both in and outside of court.

Where deprivation of liberty proceedings are contemplated: The only legal aid currently available to families and children when proceedings are contemplated is legal help level 1 public law. This is remunerated at the rate of £132 and as the figures in the table in question 1 above show, only very small numbers are accessing this form of legal help each year for any purpose.

Where an application has been made: Families struggle to access legal aid both where an is made for an order under the High Court's inherent jurisdiction and where a secure accommodation order is sought under the Children Act 1989. A parent whose child is subject to care proceedings is entitled to legal aid to fund representation. This is not means tested and only a low merits test applies. The same cannot be said in relation to deprivation of liberty proceedings. Instead, the financial situation of parents and carers, and a more stringent merits test, will determine whether they receive legal aid. What this means practically for families is that they can go to court where a decision will be made about where their child should live and who can care for them, and they will receive full advice and representation. But they can go to court, where a decision about whether to detain and restrain their child will be made, and they have little chance of securing advice or representation. The Legal Aid Agency's low income and capital thresholds (relevant to the means test) mean that many parents carers living below the Joseph Rowntree Minimum Income Standards are excluded from receiving legal aid.

The impact of this is clearly shown in data. In 2023, Family Rights Group assisted the tabling of a parliamentary question about legal representation in secure accommodation order applications. [Government said](#) that between January 2018 and September 2022, only 19% of respondents to these applications were represented. The government were unable to say what the equivalent figure was for

applications made under the High Court's inherent jurisdiction. But [Nuffield Family Justice Observatory research](#) found only 11.5% of parents or carers were represented for at least one hearing.

Reforms needed: Family Rights Group have put forward clear proposals in [a briefing note for legal aid reform](#) in deprivation of liberty cases. These include:

- Aligning the level of legal aid available with that available to parents and children in care proceedings. This would mirror the changes the Ministry made to legal aid for parents (and other persons with parental responsibility) in adoption and placement order proceedings in 2023
- Improving access to early advice for parents and children, when deprivation of liberty proceedings are contemplated. They will help families understand what applications may be made and the processes involved.

iii. Greater access to advice for kinship carers

Kinship care is when a child is being raised in the care of a friend or family member, who is not their parent. This can be temporary or long term. There are over 164,000 children in kinship care across England and Wales. Kinship care has many important benefits for children who cannot live at home with their parents:

- Love, identity and belonging: Living with someone the child knows and trusts, increases their [feelings of identity, love and belonging](#).
- Stability: Children in kinship care are more likely to have a stable, permanent home than other children in the care system. There is a [significant link](#) between being raised in kinship care and having fewer placements and less placement disruption.
- Employment: Children in kinship care are [more likely](#) to be in employment as an adult compared to children in foster or residential care.
- Mental health and behaviour: [National data](#) shows children in kinship care generally having better behavioural and health outcomes compared to those in unrelated foster care or residential care.

Kinship care also has positive benefits for wider society, delivering better long-term outcomes for most children and cost benefits for the public purse compared to unrelated foster care or residential care. Children in care are very often separated from their siblings, have to change school, or move far away from family and friends. They can be left isolated and alone. Reviews including by the 2022 Independent Review of Children's Social Care and the 2020 Parliamentary Taskforce on Kinship Care found more children in care could be living safely and thriving in kinship care with the right support.

Despite research showing kinship care leads to better outcomes for children compared to living with strangers in the care system, kinship care is not consistently explored and too often undervalued and unsupported. The 2022 APPG on Kinship Care inquiry into kinship carers' access to advice and legal aid heard evidence from hundreds of kinship carers across England and Wales, including at an oral evidence session and in a national survey carried out by Family Rights Group. It also considered analysis of calls from kinship carers to Family Rights Group's advice line and heard from legal practitioners and legal organisations working in children and family law.

The APPG on Kinship Care's inquiry heard that:

- 82% of kinship carers surveyed did not feel they knew enough about their legal options to make an informed decision about the best options for their kinship child
- Nearly 4 in 10 (38%) of the kinship carers surveyed had NOT received any legal advice about their rights and options for their kinship child
- Where carers had received legal advice, a quarter (25%) had paid for some or all of the costs themselves. Only 16% had received part or full payment through legal aid. 56% had received part or full payment by the local authority but the scope of such provision is limited
- For those who had experience of court proceedings in relation to their kinship children, almost a third (30%) had to represent themselves at least for some of the time
- Many carers indicated they were not party to proceedings which meant they were side-lined in the important decisions being made by the court about the children they had stepped forward to raise. It also means they did not qualify for legal aid in care proceedings
- Over a third (37%) of kinship carers surveyed had made personal contributions to the costs of legal advice, court fees and legal representation. Of those carers: 47% had costs up to £1000; 27% between £1001 and £5000; 16% between £5001 and £10,000; and 9% in excess of £10,000

The inquiry showed that kinship carers face multiple hurdles in accessing advice and that the child welfare and family justice system *“does not sufficiently support (prospective) kinship carers involvement or give them the ability to make informed decisions about the children they are seeking to provide a loving home for.”* It says it fails to ensure that *“kinship carers can access the legal advice and representation they need to secure an appropriate legal arrangement for the child or the support provision necessary for the child to thrive throughout their life.”*

Family Rights Group's recommendation is that a) removal of the means test; and b) a bespoke form of family help for kinship care would improve kinship carers' access to advice and representation and access to justice.

The removal of the means test: The means test is a barrier to many carers accessing legal aid due to the Legal Aid Agency's very low income and capital thresholds. Further, many kinship carers struggle financially when they take on the care of a child. Older carers, including grandparents, are often on a limited income. But many will have some savings, such as a small pension, and others are likely to own a significant proportion of their property in circumstances where they have spent many years paying off their mortgage. This does not mean that they have access to the potentially significant funds necessary to instruct a solicitor to advise and represent them on a private basis. But it may well mean that they are not eligible for legal aid. Kinship carers and prospective carers are impacted by the diminishing availability of firms offering advice at legal help level (as described in question 1 above).

Typically, a kinship carer is stepping in to prevent a child who cannot remain at home from becoming looked after. In the same way as parents' means should not be assessed when care proceedings are issued, relatives and friends who are looking to take on the care of a child in their network, often preventing them from becoming looked after, should be able to access legal aid, regardless of their financial situation. Removing the means test for (prospective) kinship carers would assist family and friends to get the legal advice and support they need to obtain the best outcome for the child.

A bespoke, properly funded, form of family help similar to that which is available for parents and carers the formal pre proceedings process: Currently, the legal aid system does not perceive kinship carers. Family help (lower) level 2 public law is reserved for parents or those with parental responsibility. Similarly, if an application for a care order is made, non-means tested legal aid is reserved for parents and those with parental responsibility. And yet in most cases, the question of whether a family member can care for a child in the event they cannot remain at home is, or should be, a central part of deciding the plan for the child.

A form of family help, funded at the same level as Family help (lower) level 2 public law, but specifically for kinship carers would help address this gap. This family help could be non-means tested. If more family members were able to access advice before matters escalated to court proceedings, it may alleviate the need for proceedings to be initiated at all and prevent children being moved to unknown carers in emergency circumstances. This relatively small investment could make substantial savings overall, by reducing the number of costly court applications and the costs of children living in foster or residential care.

Question 6: How can advice, legal support or non-court dispute resolution, such as mediation and restorative justice, help the early resolution of disputes?

Family group conferences are a family group decision making approach which is family-led and has strong evidence of diverting children from care and supporting children to remain safely in their family. The approach originated in New Zealand where it is a mandatory offer to families where there are care or protection concerns. It now has one of the lowest rates of children in care (41 per 10,000) and more children living in kinship care (39% of children in care). In England, 71 per 10,000 children are in care. Of whom only 16% are raised in kinship care. Family group conferences are now used in over 30 countries worldwide.

Family group conferences were introduced into the UK by Family Rights Group in the 1990s. Family group conferences are family led and underpinned by clear principles and standards. Family group conferences draw on the strengths and knowledge of the family network to make decisions and plans for the child. The process is supported by a skilled independent coordinator who helps the family prepare for the family group conference and facilitates the meeting. Children are usually involved in their own family group conference, often with support from an advocate. It is a voluntary process, and families cannot be forced into one.

Currently, when there are concerns about the care or protection of a child, the insights and support that the child's relatives and friends' network can provide, are not consistently explored by children's services. Therefore, the help the child's family network could provide to the parent, for the children to remain safely at home, may be overlooked. Similarly, potential kinship care options may not be considered. This means currently there are children in the care system who did not need to be. They could be safely at home with their parents or raised by relatives and friends in kinship care, instead of with strangers.

The Government have acknowledged this issue, and in Clause 1 of the Children's Wellbeing and Schools Bill they are introducing a new mandate on local authorities to offer families a family group decision making meeting when the local authority is considering whether they need to make an application for care proceedings. Family group decision making is described in the House of Lords Library briefing as "an umbrella term to describe voluntary family-led meetings that allow a family network to come together and make a plan in response to concerns about a child's safety and wellbeing, working alongside professionals. The government intention is that FGDMs will provide

families with the opportunity to come up with solutions for their children's welfare, to safely avert children entering the care. The Government's rationale for introducing this duty is based on the strong evidence base on the positive impact of the family group conference approach to deliver better outcomes for children, including averting from the care system.

Family Group Conferences - the evidence:

- As highlighted above, Family group conferences originated in New Zealand where it is a mandatory offer to families where there are care or protection concerns. New Zealand now has a low rate of children in care (41 per 10,000) and more children living in kinship foster care (39% of children in care). In England, 71 per 10,000 children are in care (of whom 16% are in kinship foster care).
- In England, 82% of local authorities have a family group conference service, of varying sizes. Family group conferences are not consistently offered to all families.
- A randomised control trial led by Foundations found that over 2000 children per year could avoid going into care and instead safely remain with their families if family group conferences are rolled out across England. It estimated a net cost benefit of £960 per child with an estimated cost saving of £150 million over two years.
- The Family Valued approach, developed by Leeds City Council, included the expansion of the use of family group conferences to a scale not previously seen in the UK, including for families experiencing domestic abuse. The impact included a significant reduction in the rate and number of children looked after, as well as reduced child protection plans and numbers of children in need. A cost benefit analysis found an average saving of £755 per family when compared to 'business as usual' social work without family group conferences.

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