



Association of **Lawyers for Children**

Promoting justice for children and young people

**Consultation response:
Law Commission Kinship Care Consultation Paper**

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Response of the Association of Lawyers for Children

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The Association of Lawyers for Children (hereafter “ALC”) is a national association of lawyers working in the field of children law. It has over 1,400 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners from both sides of the legal profession practising in different areas of the country. Several leading members are specialists with over 20 years’ experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children law and hold judicial office. The ALC exists to promote access to and equality of justice for children and young people within the legal system in England and Wales in the following ways:

- i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice.
- ii. lobbying against the diminution of such mechanisms.
- iii. campaigning and advocating on against any form of discrimination which may affect children within the family justice system.
- iv. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children.
- v. providing a forum for the exchange of information and views on the development of the law in relation to children and young people.
- vi. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
- vii. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.
- viii. Lobbying to preserve, promote and protect the rights of children of the jurisdiction of England and Wales and to seek the incorporation of the United Nations Convention on the Rights of the Child, 20 November 1989 [‘UNCRC’] into domestic law; and its implementation and recognition in the courts of England.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law and welcomes this opportunity to provide its views in respect of this consultation.

Introduction

The Association of Lawyers for Children (ALC) is grateful for the opportunity to respond to this consultation. We have confined our response to this consultation to those questions where our members have expertise and/or experience.

Response to Consultation Questions

Consultation Question 1: We provisionally propose to adopt the definition of kinship care contained in section 22I of the Children Act 1989 (and set out at paragraph 3.48 of this consultation paper) for the purposes of our proposed kinship care order and kinship parental responsibility agreements. Do consultees agree?

Yes, the definition is comprehensive and a further definition would be unhelpful.

Consultation Question 2: We ask for consultees' views on whether a child in a kinship care arrangement in England and Wales, as defined in this consultation paper, should automatically come within the category of a "child in need".

No, the ALC does not support a child in a kinship care arrangement being automatically considered a 'child in need'.

The ALC recognises that there are positive and negatives to this proposal. From the perspective of the child, the priority is that they have access to all relevant resources and support. As identified, there can be significant challenges for some kinship carers in accessing the requisite services for the child. The proposal that all children in kinship care are regarded as 'children in need' would appear, on the face of it, to improve ease of access to services. However, the ALC is concerned that categorising all such children as 'children in need' by virtue simply of their status in kinship care will, ultimately, not improve access as resources will be diverted from a proper focus on those children who need local authority support as a consequence of the requirement to offer support to a far wider cohort of children. We submit that difficulties in access stem from overstretched and inadequate resources, there does not appear to be any additional resourcing proposed. The ALC struggles to see how adding significant numbers of children to this cohort, without any assessment of need above that of their status, would be a good use of local authority staff, who would be required to hold those cases. This will not, it is submitted, result in any child in need (by virtue of their status or due to an assessment of need) obtaining the proper resources that they require.

A child in kinship care is no less eligible for services than a child who is living with their parent. Whether a child is a child in need is interpreted broadly under s.17 CA 1989, which includes the child's opportunity to achieve a reasonable standard of emotional, social or behavioural development. We are concerned that defining a child in kinship care as being a child in need may, inadvertently, serve to stigmatise the child. We are mindful that many looked after children do feel stigma and wish to have an ordinary life outside the care system. By extension, children in kinship care may not wish to be singled out or subject to plan where they do not add meaningfully to their lives.

While the fact of being in kinship may, of itself, give rise to an emotional need, this should not be assumed. Many kinship carers provide an excellent level of care without recourse to external supports. They may not welcome the intrusion that accompanies an assessment. While child in need plans are voluntary, the capacity of local authorities to assess the needs of a large cohort of children has to be

considered. This will not be a proportionate use of resources in many cases. Kinship carers who are special guardians, for example, will have been thoroughly assessed and will have agreed special guardianship support plans. It would be otiose to subject the family to an assessment under s.17 when the child's needs and services have already been identified.

On balance, the ALC does not support a child in a kinship care arrangement being automatically considered a 'child in need'.

Consultation Question 3: We provisionally propose that it should be possible for a court to make an interim special guardianship order where special guardianship has been raised in the course of public law care proceedings. Do consultees agree?

No, the ALC does not agree with this proposal. The ALC recognises the challenges of the testing out period for prospective special guardians.. In care proceedings, the court has the option of public law orders which are a more suitable monitoring framework for the testing period.

An interim SGO would locate decision-making with the special guardian at a time when they may have a limited relationship with the child and when family tensions are likely to be at their highest. This risks setting a carer up to fail and placing the child at risk.

During care proceedings, parents are under enormous pressure and often struggle to come to terms with the separation from their child, their changed role as the parent and the prospects of the future loss of their child's care. This manifests in many ways but largely includes resentments and tensions with those who are caring for the child, complaints about care given, and being hyper critical of the carer's decision making. Under an interim care order, the decision making is sited away from the carer and the LA's responsibilities to the child provides a buffer between the parent and the carer. This adjustment period is a fragile one and one in which care must be taken not to pitch the kinship carers against the parents by premature use of private law orders.

We submit that testing of a placement is most appropriately undertaken under the auspices of an interim care order. This ensures the local authority manages the transition in the child's best interest and then 'holds the ring', continuing to assess progress and reviewing support needs. An ICO alleviates the prospective special guardian of responsibility for contact arrangements, for example. This is particularly important where the placement is not agreed by the parents. In such cases, testing out under an ICO during proceedings can, without predetermining the outcome of the proceedings, serve to avoid delay for the child.

An interim SGO would confer PR upon the kinship carer. They would therefore become automatic respondents to the care proceedings. While this would facilitate access to legal advice (legal aid being available on a non-means, not merits basis in care proceedings for holders of PR), it would draw the kinship carer into the proceedings. This may serve to increase conflict with the parents who may resent the intrusion, particularly if they have shared highly personal information within assessments, and may also serve to increase the length of the proceedings by virtue of there being a greater number of parties.

We recognise that there are occasions when testing is not possible under an ICO, for example where the prospective carer will not meet regulatory approval following a negative assessment. However, we submit that it is rare that a carer would not be able to satisfy Regulation 24 approval, if the court has determined that the placement is appropriate and safe for the child. If the expectation is that a carer will

pass a special guardianship assessment and is capable of having an interim special guardianship order in their favour, that is not a category of carer who will likely fail a regulation 24 assessment as a foster carer under an ICO. In cases where Regulation 24 approval is not an option, testing can take place under an interim 'lives with' order and interim supervision order. As the case would remain in proceedings, decision making for the child can be managed. This is akin to a private law application for an SGO where the court may make an interim 'lives with' order so that the child has stability in their living arrangements with their kinship carer, and the carer has PR, during the proceedings.

If interim SGOs are introduced, the ALC is concerned that the level of PR attached should not be the enhanced level associated with a final SGO. We note that under an ICO, the local authority's power to exercise PR to the exclusion of the parents is expressly limited by statute. It would be premature to award a kinship carer such enhanced decision-making power at a time when they are inexperienced in caring for the child and where the child is still subject to proceedings. If interim SGOs are introduced, the ALC would agree that an interim supervision order running alongside an interim SGO is likely be appropriate in many cases.

It is also notable that should an interim SGO be introduced and a child is made subject to that order at a first contested hearing, as there is a family placement recommended and this follows removal from a parent's care, the child would never be a looked after child. This will result in their not being eligible for advice and assistance in the same way that they are if they were subject to an ICO or s20, prior to an SGO being made. This would need consideration and potential redrafting of regulations in respect of support, which would appear onerous and complex. Moreover, this would have the potential to remove from carers financial packages of support which are akin to level one fostering allowance and fostering benefits when a child comes into their care having been a looked after child or from an interim care order. Many local authorities' offer different and enhanced financial provision for children who have been looked after and move to a special guardianship than those who have not been looked after. That is in part a recognition of the complexities of those children's care and lived traumatic experiences. If interim SGOs are introduced, each LA would have to revisit the basis for financial support and its policies. We do not see sufficient benefits of this proposed system to warrant that course.

Consultation Question 4: We ask for consultees' views on whether, and if so how, the existing requirements for the special guardianship assessment set out in the Schedules to the Special Guardianship Regulations in England and Wales respectively, should be modified to address the specific nature of a kinship special guardian.

Many, but not all, kinship carers will have advantages which will not apply to other categories of special guardians, such as enduring relationships with the child and knowledge of the family dynamics. As a corollary, many have specific vulnerabilities and support needs arising from difficult family relationships and dynamics. These matters are all encompassed within section 4 of the Schedule to the Regulations. A sufficiently thorough assessment will address these matters. To the extent that an assessment is deficient, we submit this is due to poor training or practice rather than any gap in the legislation. Accordingly, we do not recommend any modification to the Regulations in this respect.

Consultation Question 5: We provisionally propose that when making a special guardianship order: (1) the court should be required to consider the potential for the reunification of the child to the parents' care; and (2) the default should remain for the order to be made for the duration of the child's minority.

Do consultees agree?

An SGO is an order designed to provide the child with permanence. When making such an order the court should, in its application of the welfare checklist, necessarily consider the stability and durability of the arrangements. If a parent is likely to be in a position to resume care of the child in the short-term, an SGO is unlikely, we submit, to be the appropriate order.

The ALC does not agree that the court should be required explicitly to consider the potential for reunification. This would introduce an unnecessary gloss on the welfare test set out in section 1 of the Children Act 1989, and the requirements in case law to evaluate the parents' ability to meet the child's needs in their care. The exercise which the family court currently undertakes should encompass consideration of all available care options for the child. There is very clear case law guiding this exercise. Section 1(3)(f) of the CA 1989 states "how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs" which is an evaluative exercise which allows for a balanced consideration of where the child's needs are best met. Potential for reunification is the touchstone of every set of public law proceedings. In private law proceedings, as with public law, the needs-based evaluation of ability to care requires consideration of parental ability to change. On a day to day basis we do not consider that this amplification is required to do justice for children in kinship care whose parents seek their reunification.

Further, the proposed requirement risks putting potential special guardians in perceived 'competition' with the parents. It also requires the court to make judgments about future events – and the changes a parent may or may not make - when it is not well placed to do so or may not have the evidence to do so. A court may, in appropriate cases, set out (in the judgment or recitals to the order) the expectations or likely pre-requisites that need to be achieved for rehabilitation to be contemplated.

The ALC agrees that the default and, indeed, only duration for an SGO is until the child is 18. This provides the necessary permanence and certainty for the child. That kinship carers are reportedly unclear about the intended nature and duration of SGOs points to a lack of education or inadequate access to legal advice rather than indicating a need for legislative amendments.

The ALC is concerned as to the ability both of kinship carers and the family justice system to manage time limited orders. The notion of limited-duration SGOs is problematic and undermines the central purpose of special guardianship: permanence. It is at odds with the far-reaching nature of the enhanced PR granted to special guardians. It would introduce uncertainty for the child and risks destabilising placements, particularly if a parent has unrealistic expectations about PR-sharing and resumption of primary care.

Of course, it remains open to a parent to apply to court to discharge an SGO. Upon this application, the leave gateway (§14D(5) CA 1989) requires a careful evaluation of whether there has been any significant change in the parent since the order was made. That welfare exercise is effective in our members' experience. By analogy, a parent may also apply to discharge a care order. The strikes the appropriate balance - affording the child certainty and stability while not closing the door to the parents in future.

Consultation Question 6: We ask for consultees' views on when a court makes a special guardianship order: (1) if the default duration (until the child reaches 18) remains, it should be possible for the court to attach a review date; and (2) if a review is included, whether this should be after a defined period of

time, or when certain conditions are met.

No, the ALC does not support the introduction of a review date. The concept of a review date introduces uncertainty to a legal framework that was intended to provide children with greater security. A special guardian is expected to commit to the child long term. The making of an SGO is a recognition by the court, the parents and the carers that the child will live with the SGs for the rest of their dependency. That vision of permanency has emotional consequences for a child and parent. It allows the child to put down roots in a home and to stop waiting for the day that they may go into another home. It requires the parents to recognise that they are not the child's future carer and may reduce undermining of the placement. A review creates a flashpoint for the parent, the child and the carer. A review may serve to invoke anxiety in the carer and may undermine the child putting down roots and fully committing to the placement. Further, it encourages re-litigation of issues and draws parents and special guardians into adversarial proceedings. A review may serve to raise false hopes in parents trying to cope with their child being raised away from their care and has the potential to set back any progress being made by parent if they are unsuccessful in changing the child's placement in the course of the review. A review is likely to encourage dispute and undermine the finality of the order.

If a review were introduced, the ALC considers that any timing will be arbitrary. Each parent and child is different in the journey that they will take after an order. There is no timeline that can be predicted at the point of the order where a parent may be in a position to resume care. If that is foreseeable, an order for permanence such as an SGO should not be being made. If a parent is expected to be in a position to assume care of the child in the short term, an SGO is unlikely to be the appropriate order. It is likely, therefore, that the parent will need to make significant changes and engage in longer term work to make and sustain change, for example lengthy therapy. Timescales for such work are difficult to predict. There is often slippage, whether due to resource availability or a parent struggling with a challenging therapeutic journey. Mandating a review date in such circumstances is fraught with difficulty and likely to place unnecessary strain on the family system. We submit that the existing legal framework for discharge of an SGO, where a parent may apply but is required to demonstrate a significant change in circumstances provides a mechanism for the court to review the order in appropriate cases without unduly unsettling the placement.

From a practical perspective, there is no capacity within the overstretched family justice system effectively to implement a review mechanism of final orders. It is unknown whether legal aid would be available in review proceedings. We submit that, in all likelihood, to the extent that it would be available, legal aid is likely to be means and merits tested. Accordingly, the court in review proceedings is likely to need to manage kinship carer and parents who are litigants in person, which requires intensive judicial management and is administratively burdensome particularly when needing to locate and collate papers from the previous proceedings.

It is unclear how a review would be undertaken and what information the court would have before it. If the SGO was made in public law proceedings, further proceedings would typically include all respondents to those original care proceedings. This may be a local authority that no longer has any involvement, particularly where the special guardian lives in a different area. The child would also be a party. Whereas if the order were made on a private law application, there may be no other parties. In these circumstances, we presume a review assessment would need to be directed, in addition to any Child Impact Report. We observe that there are scant resources for either local authorities or Cafcass to undertake such assessments.

The emotional and financial burden upon the SGs and parents of an ill-timed, but statutorily required,

review may be devastating to both.

Consultation Question 7: We provisionally propose that the UK Government consider revising the guidance on special guardianship support plans to emphasise the importance for local authorities to consider what support is needed to ensure contact between a child in kinship care under a special guardianship order, and their parents. Do consultees agree?

Contact arrangements should be a central consideration in any care plan for a child. We submit it is incumbent upon a local authority, when undertaken a special guardianship assessment and formulating the support plan, to consider how contact may be supported and promoted safely for the child. When making an SGO, the court is required to consider whether a child arrangements order containing a contact provision should also be made with respect to the child (s.14B(1) CA 1989). In care proceedings, the court is required to scrutinise the contact provisions in any care plan. The court therefore already requires information from the local authority addressing parental (and other) contact.

We recognise that local authority practices and approaches differ. In our members' experience, however, this is largely tied to resources as many local authorities cannot afford to commit to funding supervised contact or to funding mediation between the kinship carer and the parent which may restore relationships. We question the extent to which guidance can remedy the fundamental issue of lack of resources.

We take no issue with the emphasis being placed upon the maintenance of relationships and we would support any expressions for LAs to consider what support is needed to ensure contact between a child in kinship care under a special guardianship order and their parents. In doing so, the Government should ensure that the funding for SGO support services is recognised in the budgets given to local authorities. Without additional funding to support this laudable aim, the ALC suggests that it is meaningless and platitudinous.

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

The ALC does not agree. This proposal is not necessary nor, we submit, is it helpful. The court is already required under s.1(3) CA 1989 to consider the range of orders available. This includes orders pursuant to s.91(14). Moreover, the parents or child cannot apply to vary or discharge an SGO without leave of the court, as set out in §14D(3) CA 1989. This provides stability and security for such orders. The area in which a parent may intrude into the lives of the SGs and child is only related to an application for contact to their child and enforcement of an existing contact order. These are very important matters which require access to a court for the child, siblings and parents without the barrier of leave, the ALC submits.

As addressed in more detail in answer to question 12 below, this ALC is concerned that this proposed requirement adds an unnecessary gloss to the application of s.1(3). It appears to invite an increase in use of s.91(14) such that it would become the norm. This is unnecessary, given that a parent requires

the leave of the court to apply to discharge an SGO so any application by a parent is only likely to concern contact. It is draconian to require a parent to obtain leave before making an application for contact unless the circumstances of the case necessitate it, for example due to the particular risks posed by the parent or the parent having a history of making unmeritorious applications. If a parent misuses the route to apply for a child arrangements order then the court has section 91(14) in its armoury. Further, if, when making an SGO, the court is faced with parents who are likely to be undermining or actively disruptive with applications for child arrangements then it can consider the imposition of a section 91(14) order at the time the SGO is made. The Children Act is already flexible for these purposes to ensure that the orders are considered in the right cases. Plainly not every case needs this.

There should be no introduction of a requirement to consider section 91(14) CA 1989, the ALC submits. Not least because it risks setting a tone for the future of the child's care with a hostile slant towards the parents.

Consultation Question 9: We provisionally propose that a local authority should be under a duty to investigate whether the child has any family members abroad who may be suitable prospective special guardians. Do consultees agree?

When care planning for a child, local authorities are already under a duty to explore alternative carers. Best practice includes considering prospective carers out of the jurisdiction. Effective pre-proceedings work and a family group conference will in many cases identify potential carers.

It is unclear how far reaching this proposed additional duty is intended to be and whether it is proposed local authorities investigate options absent information from the parents.

International kinship care is complex. Consents may need to be obtained. Exploration and any assessment may require specialist legal advice and liaison via a Central Authority. The ALC is cautious about introducing additional duties upon local authorities where the ramifications are unclear. The rationale for this duty is unclear. Particular care would be needed in relinquishment cases, to ensure that investigate steps do not endanger the welfare of the child or the parents.

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

The ALC does not agree with this recommendation.

The permission stage is an important safeguard. It encourages only those who are providing longer term care to apply. It avoids families - and the court system - being burdened with unnecessary applications arising out of short-term or transient arrangements.

The existing permission requirements are not an obstacle to applications: they do not increase costs or cause delay. Permission is generally considered at the same time as the application. Further, the court has the power to make interim orders to provide stability for the child during the proceedings.

The current eligibility requirement of the child living with the kinship carer for a year is clear and well understood. This proposal lacks sufficient definition; no duration is proposed. The removal of the permission requirement may be exploited in situations where a parent is vulnerable, for example a family member using an agreed holiday as a vehicle to retain the child and make an application. Further, in cases of separating parents, where domestic abuse and coercive control are features, there is a risk of unmeritorious applications by wider family members which may perpetuate abuse through litigation.

Consultation Question 11: We provisionally propose that when making a “live with” child arrangements order in favour of a kinship carer, the court should be required to consider the potential for reunification of the child with their parents when deciding on the duration of the order. Do consultees agree?

The ALC agrees that the court should consider these issues in every case where a lives with order is contemplated but expresses caution at the prospect of fixed term orders save in limited cases where it is already planned that a parent will assume care within a known timeframe. The ALC is concerned as to the ability both of kinship carers and the family justice system to manage time limited orders more generally.

The potential for reunification will be a consideration of the court in any event. When determining an application for a ‘live with’ order, the court should necessarily consider the stability and durability of the arrangements. The application of the welfare checklist, which includes the impact upon the child of a change in circumstances and the capacity of the parents to care, involves these considerations.

The suggestion of a fixed term ‘live with’ order is problematic. An interim order may be made during proceedings but, at the conclusion of proceedings, typically the court would make an order that provides finality. This may for example, provide that the child will live with the kinship care until a specific date and will live with the parent from that time.

The proposal is silent as to what happens more generally at the conclusion of the fixed term. A ‘live with’ order only confers PR for its duration. The expectations around review or transition arrangements are unknown. The court would not keep the case open and social work involvement is not warranted in the majority of cases.

As is set out in answer to question 43 below, a fixed term order may expose the child to the uncertainty and the instability of an unplanned move when it ends. Further, it may place the child at risk of harm if the parent requires the child’s return but is not in a position to meet the child’s needs.

Extending a fixed term order would, presumably, require a further application to court. Such an application would need to be made in a timely manner, placing an obligation on the kinship carer to do so. It exposes the child to further litigation, as well as burdening the court system with future applications at a time when the judiciary encourage families not to rely on the court to resolve issues if at all possible.

Under the current system with a final ‘live with’ order, a parent would need to apply to court to bring it to an end. This provides the appropriate balance between giving the child stability in their placement and the parent’s right to seek a review of the arrangements.

For a truly short-term arrangements, it is unclear why an order is necessary at all. Delegation of PR is an option open to parents and is more likely to be suitable for short term care, such as when a parent is

undergoing medical treatment or travelling abroad.

Consultation Question 12: We provisionally propose that the court should, when making a “live with” child arrangements order in favour of a kinship carer, be required to consider whether the best interests of the child require an order to be made under section 91(14) of the Children Act 1989, requiring any person other than the kinship carer to obtain permission before being able to apply for any order under section 8 of the Children Act 1989 (a child arrangements order, prohibited steps order, or specific issue order). Do consultees agree?

No, the ALC does not agree.

The ALC is concerned at the suggestion that a s.91(14) order ‘should’ be considered in every case involving a kinship carer. This is an unnecessary gloss on the court’s consideration under s.1(3) CA 1989 of the range of orders that may be made. The proposal appears to invite a presumption that an order under s.91(14) may be appropriate. It is open to the court to consider what orders are necessary and proportionate on the facts of each case in any event. It is unclear why kinship care arrangements should be considered in a different category to other child arrangements.

s.91(14) orders are significant interference with a parent’s access to justice. Their use is properly limited only to those cases where they are necessary. In many cases, the use of prohibited steps or specific issue orders under s.8 offer a more proportionate and less draconian solution.

Typically, an application for s.91(14) order must be made on notice to ensure fairness to the parties. The ALC is concerned that this proposal may result in orders being made without adequate notice and that parents with additional needs or vulnerabilities may not have their rights sufficiently protected. This is unlikely to serve the interests of children who, in so far as it is possible and safe to do so, should maintain relationships with those parents.

The ALC is further concerned about unintended consequences of more widespread use of s.91(14) orders. If parents do not have recourse to the court for a remedy if an issue arises, there is a risk that kinship placements will be destabilised as parents utilise other means to address disputes.

Consultation Question 14: We ask for consultees’ views on whether in all applications for a child arrangements “live with” order where the applicant is (or will be) a kinship carer, a welfare report under section 7 of the Children Act 1989 should form a mandatory part of the Child Impact Report.

The ALC does not support this proposal. It has considerable implications for costs, resources, delay, and intrusion into family life. The ALC does not accept the premise of the proposal that kinship care arrangements should necessarily be considered in a different category to arrangements between parents, this risks creating confusion and a two-tier system, which is ultimately inappropriate when, in all cases, it is the child that should be at the centre of the case.

The ALC is concerned about how this proposal fits with the introduction of Child Focused Courts and the use of Child Impact Report, which has been tested in pilot areas and should address relevant issues for each case. Crucially, the CIR will provide the court with information about the child’s wishes and feelings.

Resources are limited and should be utilised proportionately. A mandatory requirement for a s.7 report will necessarily bring delay. In London, Cafcass require 23 weeks for a s.7 report. There is, therefore, almost six month's delay for any child where such a report is ordered with all the uncertainty and stresses for both the child and the family during the extended period of litigation. This is the antithesis of what CFoC are designed to address. A report should only be ordered where it is necessary, i.e. where the court requires the information to determine the case.

The ALC notes the suggestion that safeguarding checks may be limited and that telephone calls may not be sufficient. However, this of itself does not justify mandating s.7 report nor is it limited to kinship care scenarios. Our members' note that s.7 reports may also be light touch. Given resource limitations, they may be limited to one visit and may involve seeing the children at the court reporter's office without a home visit.

The ALC agrees that safeguarding checks are vitally important. More comprehensive enquires at the safeguarding stage, rather than limiting them to the police and local authority checks, may be appropriate. In particular, the ALC notes that children's schools are often a valuable source of information as they see the child daily and have frequent contact with caregivers. Requesting information from the child's school or nursery is likely to be a proportionate exercise. Likewise, for a younger child, GP or Health Visitor checks, may be pertinent.

Consultation Question 15: We ask for consultees' views on whether when considering a section 8 order application by a kinship carer there are any factors which a Child Impact Report, or a welfare report under section 7 of the Children Act 1989 (if mandatory) should be required to investigate, which are not already contained within the section 1(3) of the Children Act 1989 welfare checklist.

The s.1(3) welfare checklist has been in operation for more than 35 years. Thorough application of it will typically cover all relevant matters. The checklist is sufficiently flexible to meet the needs of most cases. It is well understood by social work practitioners and the judiciary. Any sensible interpretation of the checklist would include consideration of the child's contact with their parents within the assessment of the child's wishes, their emotional needs, their characteristics (i.e. identity), the parent's capability and the impact upon the child of a change of circumstances.

The ALC recognises, however, that particular issues may arise in kinship care which should be explored when considering the kinship carer's ability to meet the child's needs. The ALC would support the inclusion of specific reference to consideration of the child's need for contact with their parents and significant others, in particular any siblings, and any family members from the other side of a child's family (for example, how would a kinship carer on the paternal side of the family promote the child's relationships with maternal relatives). The carer's ability to support and promote the child's holistic identity, if the carer reflects only part of the child's heritage, should also be considered. These are typically matters which are addressed in a special guardianship assessment and, we submit, may usefully be spelled out when reports are undertaken for child arrangements orders.

Consultation Question 16: The current fostering regulations in England apply equally to prospective kinship foster carers and unrelated foster carers. In relation to assessment criteria, review and visits procedures, and other post-approval requirements, we ask consultees for their views on: (1) whether there is merit in introducing regulations that are adapted specifically to kinship foster care, as distinct

from unrelated foster care; and (2) if so, what adaptations would be appropriate?

The ALC recognises that kinship foster carers may face different challenges to unrelated carers. However, the ALC is cautious about any potential reductions in standards, which may be implied by this question. The Government recently consulted on revised National Minimum Standards for foster care. The standards have been updated to provide flexibility, promote enduring relationships and strengthen safeguarding. The ALC endorses these aims.

The ALC would be concerned should assessment standards be watered down. A child should not be looked after by a local authority unless it is necessary for their welfare - whether due to their needs or their experiences – for the local authority to share parental responsibility. Foster care, even where the carer is a relative of the child, is state care; the child is not subject to a private law order. That a child is in a kinship placement does not mean that they are owed lesser duties by their corporate parent. Indeed, at times more scrutiny may be required to ensure that complex family dynamics or competing loyalties do not negatively impact upon the child in placement.

Fostering assessments may be lengthy, stringent and intrusive. This is necessary. Foster carers are entrusted to care for a vulnerable child on behalf of a local authority. Children who come into care have largely experienced traumatic events including their removal from their parents with the consequential impact on their attachments and responses to substitute carers, kinship or professional carers. The local authority is responsible for ensuring that the carer can meet the child's needs and assessments should be rigorous. The ALC notes that the content of a fostering assessment is not wholly different to that involved in a special guardianship assessment. The standards of care required ought to be similar, the ALC submits. This is appropriate given that a special guardian is entrusted by the court with a similar level of responsibility for the child.

A kinship carer is usually assessed to care for a particular child rather than any child. This should be reflected in the assessment process. The ALC notes the regulatory amendments to the fostering assessment criteria for a relative or friend in Wales so as to include the carer's capacity to provide suitable care for the particular child and their needs; and to protect the child in the context of the family dynamics and local authority involvement. The ALC agrees that these important factors should be incorporated into kinship foster carer assessments in England. In our members' experience, these issues are typically explored in a connected person's assessment. We further endorse that the assessment should include details of necessary support or intervention. However, this should typically be included in the child's care plan in any event.

Regulatory post-approval requirements, such as for social work visits, keeping logs and engaging in training are necessary. Visits are for the benefit of the child, as is training to meet that child's needs. Logs are very important – the carer is exercising day to day care on behalf of the local authority, logs provide an insight into the child's lived experience. The child may be entitled to review these logs as an adult.

These requirements should not be characterised simply as a burden on the kinship carer: they are also a resource. As a foster carer, a kinship carer has access to important supports, not least a supervising social worker, fostering networks and receipt of the fostering allowance.

The ALC recognises the need for flexibility in kinship care. The requirement for a spare room is less significant in kinship care where it may be appropriate for a child to share a bedroom with a relative. In our members' experience, this has not been a hindrance to the approval of kinship carers. While a child's needs include the need for accommodation, the ALC submits that housing insufficiency should

not be a bar to care by kin.

Consultation Question 17: We provisionally propose that local authorities should be required to use a prescribed kinship foster care assessment form when assessing kinship foster carers. Do consultees agree?

All assessments should be required to cover the relevant criteria. The ALC agrees that, for a kinship foster carer, this should include the prospective carer's understanding or insight into the harm that has occurred in the family, their recognition of family dynamics and their ability, with the support of the local authority, to manage those dynamics and promote safe family relationships.

However, the ALC is cautious about being too prescriptive in how local authorities undertake and write up assessments. The ALC is mindful that local authorities have different systems and processes. There is no universal national approach. Local authorities should retain the flexibility to adapt forms to local needs and practices. For example, some authorities utilise particular frameworks for assessments, such as Signs of Safety, which should not be restricted by the requirement to use a particular form. Mandating that assessing social workers adhere strictly to a particular form introduces unnecessary rigidity and may reduce innovation and the development of best practice. That said, the content of the assessments must address the relevant domains and requirements set out in the regulations and guidance and any form or model adopted by a local authority must be quality assured to ensure compliance.

Consultation Question 18: We provisionally propose that the statutory requirement for visits and reviews in England should be varied as follows: (1) local authority visits to children in kinship foster care placements should be conducted at least every 6 months, rather than every 3 months; and (2) subsequent local authority reviews of children in kinship foster care placements should be conducted at least every 12 months, rather than every 6 months. Do consultees agree?

The ALC does not agree with this proposal.

This proposal assumes that kinship carers are all well suited to the role and the child's needs are being readily met in such a placement. The ALC submits that the aforesaid cannot be assumed in any foster care situation not least where a child has been removed into a kinship placement which is connected to their family or parents. A reduction in monitoring and scrutiny as between different types of foster carers is not a child centred approach, the ALC submits.

The making of a care order is a significant interference in family life. When making a care order, the court is required to apply the no order principle and consider whether any lesser order is consistent with the child's welfare. If the necessary and proportionate order for a particular child is a care order, it follows that the child's welfare requires the local authority to share parental responsibility for him or her and for that local authority to be involved in and have oversight of the child's care. In those circumstances, it is unclear why a child who is related to their carer should be afforded reduced standards of monitoring, support, care and fewer protections than any other child being looked after by the same local authority.

The purpose of statutory visits is to provide a check on the standards of care and the progress of the child. The visits provide an opportunity for the voice to the child to be heard outside of their carers' account of their wellbeing. Our members are familiar with the contents of these visits from our work in

care cases. Social workers regularly use the time with the child to explore comments or complaints made by them about their care or arrangements, which may have been reported to a teacher or to a family support worker; or to check in about worries that the child may have about their parents. This is an essential function for the benefit of the child. Not least because children in kinship placement may have a divided loyalty and worry about expressing any negative thoughts or feelings about their parents' for fear of upsetting the relative with whom they live. Indeed, children in care with time away from their parents may come to reveal more about their lived experiences of neglect or abuse when they feel safe. It is a complex process for a child when their trusted carer is the mother or sister or brother or other close relative of the parent that a child might want to speak about. Our members recognise that the social work statutory visits are often useful spaces for children to talk about their feelings given the complexities of talking to their carer. The ALC submits that this proposal seemingly fails to engage in the child's perspective and focusses unduly on intrusion of SW visits to the kinship carer.

The ALC questions whether a local authority can exercise parental responsibility for a child under these proposals if the child meets their social worker twice a year and the child's plan is reviewed just once a year. The local authority owes duties to the child, including ascertaining their wishes, identifying their needs and making plans to meet those needs. This requires the child to be seen and their voice to be heard.

Meetings between the social worker and the child are important so that the social worker can undertake direct work. Looked after children are likely to have had adverse early life experiences and require a social work professional to be responsive to their needs.

The ALC questions how a child can build a trusting relationship with a social worker if they are not given an opportunity to meet. This reduces a vital safeguard for the child who will be denied an opportunity to express their wishes or raise any concerns.

The Child In Care Review is an important safeguard for each child. It brings together the team for the child – social workers, school, health, therapists – as well as the carer, and, importantly, consults the parents. The review checks that the plan is working for the child. It includes a review of contact arrangements and whether rehabilitation may be in the child's interest. The IRO performs a vital oversight function to audit the child's needs and services to be provided to them. To reduce this to an annual review is not child focused. Children's needs are not static. Six monthly reviews appropriately balance the need to identify and act on issues promptly while avoiding undue interference in day to day life.

For children living with disability, the multidisciplinary nature of these review meetings is very valuable. Our members have considerable experience of kinship carers of children with significant mental health and/or behavioural and/or medical/health needs seeking to have children in their care placed under a care order because of the unique MDT planning that takes place at these meetings. Children living with disabilities required varied support which is closely reviewed; no relative carer could hope to bring all of the relevant services together outside of a CLA meeting.

The ALC does not support a reduction of this necessary audit of care and support services review for children in kinship placement as their needs are no less important than children in professional foster care. From a child centred perspective, the frequency of visits and reviews should be indistinguishable by reference to the type of carer.

This proposal introduces a two-tier system for looked after children. It is manifestly unfair to the child, who the court has determined requires the local authority's support and intervention, and is entitled to

the same protection and input as any other child subject to a care order. If the care order is no longer necessary, it should be discharged.

The ALC is concerned that this proposal appears to be driven by the wishes of the adult carer rather than the needs of the child, whose welfare is paramount in the court's decision-making. If a kinship carer does not wish to comply with foster care requirements, notwithstanding all the additional benefits afforded to a foster carer in terms of support, training and payments, there are other options open to them, such as pursuing special guardianship or child arrangements orders. These options should always be explored during the assessment process.

Consultation Question 19: We provisionally propose that it should be possible for a child's parents to enter into an agreement with a child's kinship carer(s) to share parental responsibility for a child. Do consultees agree?

The ALC does not agree with this proposal.

It is unclear what purpose such an agreement would serve when the ability to delegate day to day decision making already exists. Delegated PR is appropriate for periods when a parent is unavailable due to convalescence or work abroad or where a kinship carer is providing respite or regular care. Further, delegation specifically prevents more significant decisions being made without parents being involved.

Moreover, parental responsibility is linked to parentage and very closely defined categories of people may obtain it for a child. It is a powerful set of rights and responsibilities for a child. PR includes the right to consent to withdrawal of life sustaining treatments for a child, to consent to irreversible medical treatments or vaccinations, to change a child's school and make choices about religious instruction and rights to take the child out of the UK for up to 4 weeks. The rights are powerful and far reaching. They are primarily for the benefit of the child not the bearer of PR. The ALC has reservations about expanding the scope of persons to whom parental responsibility can be granted beyond those who are parents, stepparents, testamentary guardians and holders of child arrangements orders, by agreement and without any court scrutiny as to the purpose for which it is being given and the circumstances in which it is being granted.

Any arrangement where a child is being cared for by someone who is not their parent should be one where genuine involvement of the child's parent is possible, and available. The PRA supposes there will be sharing of PR with the parents and joint decision-making.

The ALC is concerned about the potential for PRAs to be exploited as a means to control vulnerable parents. The suggestion in the consultation that a PRA may cater for circumstances in which a parent has substance misuse issues such that they cannot care for the child for the duration of their minority raises questions about (i) whether that parent would be able to give informed consent to the PRA, (ii) whether that vulnerable adult is in a position to assert their autonomy or wishes over the concerned kinship carer who has de facto care of their child, and (iii) whether there should be local authority or court oversight. Similarly, if mental health is a significant feature, there would be concern about whether the parent could provide proper consent for major decisions. In these circumstances, kinship carers should be seeking real and genuine permanence for the child by way of private law orders.

There will need to be an EDI risk assessment matrix prepared for any such proposal before it can be

properly evaluated. We have not seen careful analysis of the impacts of this on different communities, upon women, those living with learning difficulties, and the mentally ill. Our members are routinely involved in cases where certain communities live in a multi-generational household or close family structure and children are cared for by aunties/grandparents and not their parents for periods of time. The reallocation of PR in such scenarios may only serve to disenfranchise the parents where they are the weaker partners in the family dynamics. Our members have been involved in numerous cases where oppressive and coercive behaviours from the husband's mother and/or father imposed on an isolated non English speaking wife keeps that woman from the care of her child when the grandparents assume care against her will; which is not free will or a consensual arrangement in that context. Kinship PRAs are a means of perpetuating abuse in that context. The ALC notes that the procedure set out in the paper provides no safeguards at all to women in domestically abusive family contexts.

This consultation proposal appears to be based upon concern that a child is invisible and without proper protection. Enabling an arrangement whereby PR can be shared with kinship carers in an agreement does not offer any additional protection to a child. The ALC notes that one of the significant concerns raised about kinship care is the "informal" nature of the arrangement, and that there is little objective oversight. This proposal will not make a child any less "invisible" as it is not proposed that the arrangements underlying the PRA are scrutinised by the local authority or the court. There are also resource implications if the Family Court is required to manage another raft of agreements.

It does not appear that a minimum age requirement for the child subject to the PRA is proposed. It is unclear what consideration has been given to the child's need for permanence. Research makes clear that children require proper permanence in the medium to long term. The ALC is concerned about the potential for a newborn baby to be subject to a PRA with scant oversight or planning for that child's long-term needs. Moreover, agreements entered into by post-partum mothers who are relinquishing care require a degree of scrutiny and oversight which would be provided if orders were applied for to secure parental responsibility for the child's care.

The ALC does not agree that PRAs are appropriate for short term / part time care arrangements or medium to long term arrangements. PR is not a time limited concept. Decisions taken by holders of PR can be irreversible and lifelong, such is the power of the legal concept. If PR is to be given to a person with care of a child over the short term, then delegated PR is a flexible concept that allows the parent to limit its use. We note that the Law Commission papers that informed the development of the Children Act set out the flexibility of delegated PR for children in transient care of others.

If a medium or long term arrangement for care away from the parents is required, an application has to be made for an order (SGO or CAO) for the kinship carer to acquire PR. In that event, a full welfare evaluation will take place as to whether it is a suitable care arrangement for the child and whether PR is required. That is protective of the child's position, the parents' position, and ensures that carers are protected from the revocation of their court ordered PR.

We note that a kinship PRA provides no protections for the parents such as legal advice as to its implications for them. The current position, which requires the carer or parent to apply for the order, brings the family into the legal system where signposting for legal advice is more readily available.

The ALC notes that there is no provision as to how a parent might revoke an enduring PRA. The ALC presumes that, should a parent wish to revoke or alter this arrangement, they would need to issue court proceedings to have the child returned to their care and/or to revoke the PRA. This is a significant interference with parental rights. In principle, a parent should be able freely to give and also revoke

consent to anyone else caring for their child. An appropriate comparator is the use of s.20 agreements. Under s.20, a parent can change their mind; request the return of their child and/or disagree with placement options. The ALC is concerned that there are no such safeguards built into the proposed PRA. This could easily be abused in circumstances where coercive control is present, where a parent is young, or where, for cultural reasons, a parent is not being supported by their family to care for a child.

The ALC notes the reference to the relative ease with which a step-parent may obtain PR as a partner of a parent. However, a crucial difference in step-parent PRA is that one of the parents is also offering care alongside the step-parent on a daily or regular basis and the arrangement is intended to endure throughout the child's minority. The step-parent does not displace the parent in decision-making as is implied in the proposed PRA where a kinship carer assumes full-time care for the child without the parent. Further, a step-parent does not require a s.8 order as they are usually residing with the parent who holds PR. A kinship carer caring for a child without the parent is an entirely different prospect.

Consultation Question 20: We provisionally propose that a kinship parental responsibility agreement should require the consent of all parents with parental responsibility, and of any other individuals who hold parental responsibility for the child, before the agreement is made. Do consultees agree?

The ALC opposes the introduction of kinship parental responsibility agreements. If this were to be introduced, the ALC strongly endorses the requirement that all parents with PR, and any other individuals who hold PR for the child, consent to any such agreement.

Consultation Question 21: We provisionally propose that, where parental responsibility for a child is shared using a kinship parental responsibility agreement, it should not be possible for the agreement to provide for either the parents or kinship carer to exercise enhanced parental responsibility. By enhanced parental responsibility, we mean parental responsibility that can be exercised by one of its holders to the exclusion of any other holders. Do consultees agree?

The ALC opposes the introduction of kinship parental responsibility agreements. The ALC agrees that if PRAs for kinship are introduced then a PRA should not convey "enhanced" PR to a kinship carers. Such an arrangement is likely to be problematic, with significant scope for confusion and exploitation.

Consultation Question 22: We provisionally propose that: (1) only kinship carers who fall within both the definition of kinship carer in section 22I of the Children Act 1989, and the definition of relative in section 105 of the Children Act 1989 (that is "a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent") should be able to enter into a kinship parental responsibility agreement; (2) it should be possible for a prospective carer under a kinship parental responsibility agreement to satisfy the definition in section 22I of the Act based on caring for a child at a date after the kinship parental responsibility agreement is made, with this date to be specified in the agreement; (3) the number of kinship carers with whom parental responsibility can be shared should be limited to two in each agreement; and (4) it should only be possible for there to be one kinship parental responsibility agreement with respect to a child at any one time. Do consultees agree?

The ALC opposes the introduction of kinship parental responsibility agreements. The ALC would agree that the above would be the correct criteria if a PRA were to exist.

Consultation Question 23: We provisionally propose that a kinship parental responsibility agreement should: (1) take effect on the later of the date on which it is received and recorded by the Central Family Court and any commencement date set out in the agreement; (2) be brought to an end by: (a) the expiry of the period set out in the agreement; (b) an order of the court made on the application of any person who has parental responsibility for the child, removing parental responsibility from the person to whom it was provided by the agreement; (c) an order of the court made on the application of the child with permission of the court, removing parental responsibility from the person to whom it was provided by the agreement, such permission only to be granted where the court is satisfied that the child has sufficient understanding to make the application; or (d) the child reaching the age of 18; and (3) be for such period as the parties specify subject to a minimum duration of one year. Do consultees agree?

The ALC does not support the proposed PRA.

All of the onus of this proposal is on the parents to come to a court and bring a kinship PRA to an end. This fails to have any regard to the child's perspective. A child is best brought up by its parents' and the grant of PR recognises that. The enactment of the CA 1989 brought in changes as to who would have PR for children and linked the legal status of parent to the legal rights and responsibilities to a child. The rationale set out in the Law Commission reports was to move away from a system where parents of children had indistinguishable legal rights from their legal parents. That was a fundamental precept of the Act. This contemplated change is a wholesale reversal of those principles. It is not in a child's interest for their legal control to be capable of being given away easily by agreement and so difficult to get back unless one's parent goes to court. It is currently the other way around. The ALC supports the continuation of the current system. The exploitation of vulnerable parents and children will be facilitated by this recommendation, the ALC submits. The court is a necessary check and balance on which adult should care for a child when they are not a parent or step-parent. That is a child centred analysis under section 1 CA 1989. A PRA would not require the performance of a welfare analysis, but its removal would. That is enhancing the situation of the kinship carer over the child's needs and their parents' rights.

The ALC does not believe that a parent of a child, who may well have additional vulnerabilities, should be required to apply to a court to bring this to an end. This fetters a birth parent's ability to decision make without anyone having scrutinised the initial arrangement. It seems draconian to suggest that a parent must apply to discharge a voluntary agreement that they may well have entered into when they needed help the most. Where a parent looks to the local authority, rather than a relative, for support/assistance with child care during such a period of need, s.20 can be ended at any time by them. If a local authority disagrees, the onus is on the local authority to apply to the court and evidence why the parent should not care. It appears that the burden of proof is reversed under a PRA and the usual presumption, that a child should be with their parent, absent any safeguarding or welfare reason, has been displaced. The ALC is concerned by the impact of this approach upon children whose relationships with their parents may be interfered with unduly.

Consultation Question 24: We provisionally propose the following process for the making of a kinship parental responsibility agreement: (1) the parents and the kinship carer must sign the document before

a justice of the peace (a magistrate), a justices' clerk, an assistant to a justices' clerk, or a court official who is authorised by the judge to administer oaths; (2) the parents and the kinship carer must provide evidence of their identity; (3) the parents must provide evidence that they have parental responsibility for the child; (4) the kinship carer must provide evidence that they are within the category of people entitled to apply for a kinship parental responsibility agreement; (5) the application form must require the parties to list all those who already have parental responsibility for the child, thus ensuring that there is no pre-existing kinship parental responsibility agreement with respect to the same child; (6) the kinship parental responsibility agreement and the supporting evidence must be sent to the Central Family Court, with the agreement to be recorded and sealed by the Court; and (7) copies of the sealed kinship parental responsibility agreement must be sent by the Court to the parents and kinship carer(s). Do consultees agree?

No, the ALC does not agree. Nothing in the proposed process relates to a child's interests. Nor does it provide an independent check that the person actually has care of the child. Nowhere is there a check on whether the parent is being coerced. Nowhere is there a check on the bona fides of the proposed carer or their suitability to care.

When PR agreements are entered into by parents or stepparents it is because they are closely related as such to the child. PR comes with being the actual parent or married/civil partnered to them. Relatives who are seeking to assume, or have assumed, care of a child are not entitled to that care by virtue of being in the special status of a parent or married to one, thus some enquiry into how and why that is better for the child than being with a parent is necessary. This scheme and procedure does not provide for that.

We note that for women in domestically abusive or coercive and controlling family systems, there is no protection for her, no provision for independent advice or IDVA support or a check that she is exercising free will. The process of an application for a CAO or SGO provides a safeguarding structure through CAFCASS to check such matters and identify them early.

Consultation Question 25: Section 66 of the Children Act 1989, uses the terms "a privately fostered child" and "to foster a child privately". We have been told that some stakeholders find this language confusing, because, for example, of the potential for confusion with children being looked after by the local authority who have been placed with foster carers. We ask for consultees' views on whether and why they find these terms confusing.

The ALC's members do not typically encounter this confusion in their clients. If it is confusing language, that points only to a lack of education and awareness of the concept of private fostering and the procedural protections that it engages for children. The ALC suggests that educative materials can be made readily available to the public through social media and the internet. With the advent of AI, the information is only a question away.

The area of private fostering may be one where local authorities and the community need better education to understand what it means as a framework and what benefits it can offer. The ALC notes that there are a number of references about private fostering not being an arrangement which attracts the same financial support package as may be available to a special guardian (for example). There are clear and obvious reasons for this, including those children who are in the UK for the purpose of private education or state education and living with family friends. Local authorities have no obvious role in overseeing these types of arrangements in terms of safeguarding. The implied suggestion that local

authorities should bear financial responsibility for private fostering arrangements, which by their very nature are privately decided by families without the local authority's direction, carries significant financial and administrative consequences. The spending implications for a suggestion that local authorities should take over responsibility for the financing of private fostering arrangements are considerable and would require robust proposals to enhance social care spending in the spending review. We do not see this being considered in the consultation paper.

Consultation Question 26: We ask for consultees' views on whether a child cared for by a foster carer in the child's own home, in the absence of any parent or other person with parental responsibility for that child, should fall within the definition of a privately fostered child.

Expansion of the definition of private fostering to refer to 'home' risks unnecessarily overcomplicating matters.

It is not clear what is meant by 'home'. A child would not typically own property or be the main tenant on a rental property. There is no practical or legal reason that a person caring for a child cannot move into the family home to provide that care. The meaning of 'home' depends on an individual's own definition and understanding. It is not analogous to habitual residence. A person can alter what they consider to be their 'home' by having their belongings there and spending time there. The question of 'home' appears to be the least concerning issue related to private fostering.

There are situations known to our members where a child with a disability has had a care package set up in an adapted home purchased/rented for the child through a large PI claim. In that scenario you may have a situation where carers are brought into care without the parent in a home. This set up would be made unduly complicated by this change in the statutory definition.

The ALC does not support altering the approach. Respectfully, the ALC supports education to aid understanding of what private fostering is, rather than supporting any legislative amendments.

Consultation Question 27: We ask for consultees' views on whether a child who is not disabled and is aged 16 or 17 should fall within the definition of a privately fostered child, if they are living in an arrangement that would, but for their age, be classed as a private fostering arrangement.

The ALC does not support the extension of private fostering to 16–17-year-olds. The current arrangements appropriately reflect the greater degree of independence afforded to older teenagers.

Consultation Question 28 (1): We provisionally propose that (1) A kinship care order should be introduced.

The ALC does not agree that a kinship care order should be introduced. We have carefully considered the provisional proposal as to how a kinship care order should operate with regard to the Commission's terms of reference. The ALC does not consider that the introduction of such an order would lead to a simplified or streamlined legal framework for kinship care, or that it would increase the coherence of the system or make it easier to navigate either for kinship carers, families or children.

While the ALC recognises that there is force in some of the criticisms of the operation of the available

orders to regulate kinship arrangements for children, we consider that limited reform of those orders, as proposed by the Commission, and commented on in our answers above could go some way to address the issues raised. Many of the difficulties encountered by kinship carers, parents of children in kinship arrangements, and children in those arrangements, are caused by a lack of resources and support – these resource issues will not be addressed by the creation of the new order. To the extent that the current scheme of orders is unclear to kinship carers, that could and should be remedied through better support, education/marketing and provision of advice. Creation of a new order appears to the ALC to be unnecessary and potentially counterproductive. There is a real danger that legislative reform gives the appearance of action whilst leaving the underlying support deficits untouched.

There is flexibility of legal effect within the existing scheme of Child Arrangements Orders and Special Guardianship Orders, bolstered by the court's ability to make Specific Issue Orders and Prohibited Steps Orders. The statutory scheme as drawn provides adequate flexibility to meet the diverse needs of children in a range of kinship care situations. For example, the bespoke regulation of the exercise of parental responsibility that may be achieved through a kinship care order can also be achieved, where necessary, through the making of Specific Issue Orders/Prohibited Steps Orders regulating the exercise of parental responsibility by those who hold it in respect of a child. Such orders are used when required to meet the needs of an individual child or family. We therefore do not consider that a new order is necessary to enable flexibility for courts in meeting the needs of children in kinship placements.

As we address further in our answers to specific questions below, the ALC submits that the flexibility provided for in the proposed KCO adds, rather than removes, complexity in comparison to the existing scheme of orders.

The existing scheme contains two primary orders for regulation of kinship placements, the legal effect of CAOs and SGOs are relatively straightforward and the court is not required to consider multiple variables when making an order. Flexibility is available where needed, but the court is not invited to make bespoke arrangements in every case. The flexibility inherent in the proposed KCO means that it offers no straightforward baseline legal effect, and that the legal effect of a KCO will depend on the court's exercise of discretion in respect of a number of variables (duration, grant of enhanced PR, specific decisions as to exercise of PR, implementation or not of a s91(14) order). The ALC submits that the effects of the grant of a bespoke KCO removes any legal certainty as between kinship carers and generic health, education and professional services that encounter the family. The implications of KCOs will be more difficult to understand than the fixed baseline effects of grant of a CAO or a SGO, particularly for unrepresented litigants. The majority of applicants and respondents in KCO applications will be unrepresented where an order is sought in a private law context. The bespoke nature of KCOs may also present difficulties for professionals tasked with navigating those orders, such as schools, doctors etc who will need to manage both the kinship carer and parental relationships/competing consents on a case-by-case basis.

The ALC is concerned that the requirement for the court to undertake a bespoke consideration of issues around exercise of PR, enhancement of PR, duration of order, provision of review conditions, and implementation of s91(14) orders, when considering whether and in what terms to make a KCO, increases the potential for conflict and litigation between kinship carers and parents with parental responsibility. This is so both at the time the making of an order is under consideration and after an order is made. It may unintentionally encourage litigation on speculative issues around the exercise of PR in specific circumstances that have not yet, and may never arise.

The ALC is concerned as to the ability both of kinship carers and the family justice system to manage

time limited orders. As addressed further below, the ALC is sceptical as to the actual benefit of time limited and interim orders. The ALC is concerned that encouraging review and re-litigation of issues multiplies the opportunities for parents and carers to be drawn into adversarial proceedings. This both encourages disputes and undermines the certainty and finality that is often intended when the court makes orders for a child to live with a kinship carer. These orders may serve to undermine a child's sense of permanence, the ALC submits.

The ALC is also concerned as to how this bespoke exercise will be accommodated by the already overburdened family justice system. Local authorities or Cafcass would need to prepare reports of sufficient detail to guide the court on exercise of its wider discretion as to the specific terms of a KCO, and the court will need to allow time to properly consider those terms. It may be that practice as to the terms applied within a KCO will come to vary depending on whether the court is provided with a report from a local authority or Cafcass, the quality and detail of report received which itself may vary by area, the level of judiciary to which an application is allocated, and on whether the case arises in a private or public law context. The flexibility inherent in a KCO may lead to a wide variation of practice across the country, which would undermine the coherence of the KCO scheme as a whole.

The ALC submits that the concept of the KCO is trying to do too much in each order: enhanced PR for the carers, a restriction upon the parents making any applications for contact or other section 8 orders, and restraining orders. The statutory scheme already provides for the range of orders to cover these matters. Where a child lives with order is the more appropriate and less intrusive approach, perhaps for a teenage child living with a grandparent and who has extensive time with each parent, but the father should be restrained from accessing the child's medical and educational records as it is causing distress to the child, that can be addressed by a CAO and Prohibited Steps Order. Every child and situation is so very different and the dynamics and problems encountered are often nuanced. There is an exceptional range of orders available under the Children Act 1989 and the statutory schemes for protective injunctions.

The identified difficulties in the consultation that the KCO is aimed at addressing are indeed better remedied by public funding and legal advice reform for kinship carers, including non means tested legal aid for the application for the SGO, every application to vary, discharge or for contact or a section 8 order. The ALC contends that kinship carers should be funded to become involved earlier in proceedings and be given sufficient information from proceedings to be able to evaluate the necessary range of protections and orders that might be required by them in their care for the child. That would allow the carer to direct the range of protections and orders that they consider would suit their family in a timely manner and allow for the court to consider the bespoke arrangements at the final hearing with the voice of the kinship carer having been heard. Reform of the legal funding scheme for carers and reconsideration of role that kinship carers play in the care/SGO/CAO proceedings addresses many of the points of concern by carers but not fully considered as an option in this paper. The ALC is willing to engage with the Law Commission and assist in any roundtables or discussions to explore this alternative more fully.

Consultation Question 28 (2): when making a decision about whether to make, vary or discharge a kinship care order, (a) the welfare of the child shall be the court's paramount consideration; and (b) the court shall be required to have particular regard to the matters contained in the "welfare checklist" in section 1(3) of the Children Act 1989. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all. If the KCO is to be introduced, the ALC agrees that the child's welfare must be the court's paramount consideration and that the court

should be required to have regard to the ‘welfare checklist’ in section 1(3) CA 1989.

Consultation Question 29: We provisionally propose that to apply for a kinship care order appointing them as a child’s kinship guardian, an applicant must (1) be aged 18 or over; (2) be a kinship carer (defined as we propose in Consultation Question 1) for the child; and (3) have provided care and support for the child in a kinship care arrangement for at least 28 days immediately preceding the application for a kinship care order. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all. If the KCO is to be introduced, the ALC agrees that these are reasonable conditions for an applicant to meet.

Consultation Question 30: We provisionally propose that (1) a relative, friend or person connected with the child who does not meet the requirements set out in Consultation Question 1 may apply for an interim kinship care order if they have obtained the permission of the court to make the application; but (2) this should not extend to an individual who is a parent of the child in respect of whom a kinship care order is sought. Do consultees agree?

As set out in answers below and particularly in answer to Question 45, the ALC queries the purpose of an interim KCO when the court could regulate interim kinship placements with connected people who do not meet the requirements set out in question 29 above through use of s.8 CA 1989 orders.

If an interim KCO were to be introduced, the ALC agrees that the court should not be able to grant permission to apply for an interim KCO to an individual who is a parent of the child concerned.

Consultation Question 31: We provisionally propose that it should be possible for more than one kinship carer jointly to apply for a kinship care order appointing them as a child’s kinship guardians. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all. If the KCO is introduced then yes we agree.

Consultation Question 32: We provisionally propose that the court may make a kinship care order if it considers that the order should be made, even though no application for a kinship care order has been made. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all. If the KCO is introduced then yes we agree save that before making a KCO in the absence of an application, the court will need to consider whether it has sufficient evidence upon which to make an informed decision on the particular terms of the KCO.

Consultation Question 33: We provisionally propose that a kinship care order grant a kinship guardian parental responsibility for the child for the duration of their appointment. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all. If the KCO is introduced then yes we

agree.

Consultation Question 34: We further provisionally propose that when making a kinship care order, the court should be required to consider how, having regard to the particular circumstances of the case, parental responsibility should be exercised for the duration of the order. Do consultees agree?

Consultation Question 35. We provisionally propose that the court be able to direct as part of a kinship care order that a person with parental responsibility named in the order shall be entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child. This would mean that such a person would gain what we have referred to in this consultation paper as “enhanced parental responsibility”. Do consultees agree?

Consultation Question 36. We ask for consultees’ views on whether the court’s power to grant enhanced parental responsibility to a holder of parental responsibility (as envisaged in Consultation Question 35 above) in a kinship care order, should be limited to a particular category of holders of parental responsibility.

Consultation Question 37. We further provisionally propose that the court be able to direct, as part of a kinship care order, that restrictions shall be attached to the exercise of any person’s parental responsibility (including the exercise of enhanced parental responsibility). Do consultees agree?

The ALC does not agree that KCOs should be introduced at all.

If a KCO is to be introduced, then the ALC agree that the court should be required to consider and determine how parental responsibility should be exercised for the duration of the order. This appears to be an intrinsic part of the anticipated flexibility of a KCO, and the proposal would not appear to work as proposed without this flexibility.

However, as set out above, the ALC is concerned that this flexibility is an area which is ripe for dispute between kinship carers and parents, even when the fundamentals of who a child should live with are agreed. If a court is required actively to consider detail as to the exercise of PR when making a KCO, a kinship carer who seeks particular security, through grant of enhanced PR, will need to justify their position. A parent who consents to the making of an order that their child lives with the applicant kinship carer may still feel that they need to contest issues relating to exercise of PR to protect their position in respect of issues that may arise in the future. By contrast, the enhanced PR granted by a SGO is a default feature of that order, rather than something that a kinship carer has specifically to request and justify with reference to evidence as to how a parent may misuse PR in future.

The ALC understands that the proposal for a bespoke, flexible KCO may be prompted by a desire voiced by kinship carers for an order that wards off future dispute by determining issues around exercise of parental responsibility at the outset. However, the ALC submits that it will never be possible to account in an order for all circumstances that may arise in the future. It is often challenging to achieve a sustainable balance between a kinship carer’s understandable desire for certainty and ability to make safe decisions and a non-resident parent’s desire to remain involved and not be excluded in significant decisions. There will always be scope for disagreement irrespective of how tightly an order is drafted, and if an order attempts to address in advance the minutiae of exercise of PR, this may send the message both to kinship carers and parents that resolution of future disagreements lies in further proceedings before the court which made the order, rather than in discussion and non-court dispute resolution.

Consultation Question 38: We provisionally propose that whilst a kinship care order is in force with respect to a child: (1) no person shall (a) cause the child to be known by a new surname; or (b) remove the child from the United Kingdom without either the written consent of every person who has parental responsibility for the child or the permission of the court; but (2) it shall be possible for a person named in the kinship care order to remove the child from the United Kingdom for no longer than such a period as the court shall specify when making the kinship care order, to a maximum of three months. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all. If the KCO is introduced then yes, it is agreed in part.

The proposal at (1) reflects the current operation of the special guardianship order in s.14C(3) CA 1989. This reflects the fact that some significant matters require the agreement of all those with parental responsibility and, in the ALC's view, operates well in practice.

We query the need to introduce a potential further point of dispute between parents and the kinship carer by requiring the court on the making of every kinship care order to determine for how long a kinship carer should be permitted to remove the child from the jurisdiction. In respect of an SGO, s.14C(4) CA 1989 prescribes three months as the period for which permission is required. The ALC is aware of no principled or practical difficulty with the operation of this provision requiring a different approach to be taken in relation to a kinship care order. Moreover, the ALC is concerned about the impact on the child of introducing further areas of dispute for the court to resolve when making a kinship care order.

Consultation Question 39: We provisionally propose that when making a kinship care order, the court must (1) consider how the relationship between the child and the parents should be managed; and (2) set out in the kinship care order the extent to which the child is to spend time or otherwise have contact with the parents. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all. If the KCO is introduced then yes we agree.

This reflects, albeit potentially in different language and more expressly, the obligation imposed on the court when making an SGO to consider whether a child arrangements order containing a contact provision should also be made with respect to the child (s.14B(1) CA 1989).

The ALC would caution against any language which confines (or gives the appearance of confining) such consideration only to contact between the child and their parents. Children have a right to ongoing relationships with all those who are important to them, including siblings, other relatives, family friends, and others. The current wording of s.14B(1) CA 1989 is broad enough to encompass all such individuals and this flexibility should not be removed within any kinship care order.

Consultation Question 40: Additionally, we ask for consultees' views on whether, when the court is considering whether to make a kinship care order, there should be a rebuttable presumption that the involvement of a parent (which may be direct or indirect) in a child's life will further their welfare.

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

The ALC does not agree that KCOs should be introduced at all.

If a new kinship care order is to be created, the ALC does not support the introduction of a presumption akin to that contained in s.1(2A) CA 1989.

As set in response to the previous question, the ALC agrees that the court should, when making a kinship care order, be required to consider the arrangements for the child to have contact with their parents and any other important people in their lives. The court would necessarily be required to do so having regard to the paramountcy principle and the welfare checklist.

The ALC does not consider it necessary to introduce a statutory presumption into that welfare analysis. The possible circumstances in which a child becomes cared for by a kinship carer, and the appropriate arrangements for contact with other family members, are infinite. While it will almost always be in the child's best interests to have some ongoing involvement with their parents, the court should be left with the discretion, having regard to the welfare checklist, to determine the appropriate arrangements for the child.

The MOJ's Harm Panel concluded that "[o]verall, the evidence received by the panel suggests that the presumption is implemented inconsistently and is rarely disappplied. To the extent that the courts' pro-contact culture operates as a barrier to addressing domestic abuse, it serves to reinforce that culture." [page 88]

Moreover, the Ministry of Justice's Review of the presumption in s.1(2A) CA 1989 found that the evidence-base for such a presumption benefitting children or improving decision-making for them is limited. It would also be anomalous for this presumption to be included in circumstances where the Government has indicated that it will be repealing the presumption in s.1(2A) CA 1989.

Presumptions of this nature in the context of children who are unable to live with their parents fail to have regard to the varied reasons why they need to live elsewhere. The children may have experienced frightening and traumatic behaviours or abuse from a parent and been removed in the course of care proceedings. Any decision about contact arrangements or involvement of the parent is likely to require risk assessment, and then a careful welfare balancing exercise. Children who have experienced abuse or trauma are not likely well served by a presumed starting point and are far better served by a child centred evaluation of their specific welfare.

Consultation Question 41: We provisionally propose that where support for those involved in the kinship care arrangement has been assessed by the local authority, the final kinship care order should record the assessed level of support, and a kinship care support plan should be attached to the order. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all.

If KCO's are to be introduced then the ALC agrees, in part. The ALC agrees that a kinship care order plan, akin to that required by s.14F(6) CA 1989, should be required whenever support services are to

be offered. This is an important record of the family's assessed need for support and the support services to be provided.

It is unclear what is meant by "the final kinship care order should record the assessed level of support". Is this to be by way of a recital to the order? What does such a record add, beyond the support plan? It is not immediately clear to the ALC what benefit such a record brings to the child when there will be a formal support plan attached to the order. It appears likely either that: (a) this would be unnecessary duplication of the contents of the support plan; or (b) this would be an unhelpful and unnecessary summary of the support to be offered, which is ripe for disagreement between parties as to how best to reflect or summarise the contents of the support plan.

Support needs will also change over time, and so the support needs and plan summarised within the order will become out of date and could cause confusion rather than aid certainty.

Consultation Question 42: We ask for consultees' views on (1) the extent to which a local authority should be required to assess the support needs of those involved in a kinship care arrangement when a kinship care order is sought; and (2) how any such requirement might operate.

The ALC agrees that the relevant local authority should be required to assess the support needs of those involved in a kinship care arrangement. In broad terms, this should be required in a manner akin to the approach required by s.14F CA 1989 and the Special Guardianship Support Regulations 2005.

The ALC does not consider that there are any reasons to depart from the overarching legal framework which is currently applicable to SG support.

This is distinct from the question of the resources available to a local authority. The ALC recognises that many kinship carers feel that inadequate support is provided to them and that the support is time limited for far too short a period. The ALC would support any increase in funding or broadening of the scope of support available to families in which kinship care is provided to a child. The ALC would support the lengthening of the periods for which financial and therapeutic support services are available to children in kinship care provided it is accompanied by additional and adequate resources to the LAs in order for them to provide those services.

However, it is recognised that such issues are beyond the scope of this consultation. In terms of the broad framework applicable to the assessment of the need for SG support, the ALC considers that it would be unhelpful and unnecessary to create a separate and different framework from that applicable to the SG support, as contained within s.14F CA 1989 and the Special Guardianship Support Regulations 2005.

Consultation Question 43: We provisionally propose that a kinship care order may be made in respect of a child appointing a kinship guardian for such period as the court considers appropriate, save that the order shall in any event cease to have effect when the child reaches the age of 18. Do consultees agree?

No. It is entirely unclear to the ALC what the purpose of a time-limited kinship care order would be and why the child's welfare in instances of short-term kinship care cannot be protected by way of a child arrangements order.

The ALC agrees that the spectrum of circumstances in which a child may be cared for in a kinship care arrangement is a broad one. It also agrees that there may be circumstances in which it is agreed that the arrangement is time-limited and it is envisaged in fairly concrete terms that the child will return to their parents' care within a short period of time. The most obvious example may be a period of parental ill-health.

However, the ALC considers that the current legal framework within the Children Act 1989 is capable of catering for all such situations. In such circumstances, it is unclear what benefit a kinship care order would provide to a child which a child arrangements order (accompanied, if necessary, by other s.8 CA 1989 orders) would not. For instance, in the example of parental ill-health, a child arrangements order could provide certainty and stability in respect of the child's temporary living arrangements and confer parental responsibility upon their kinship carer. If necessary, the exercise of parental responsibility by the parent(s) could be regulated by way of specific issue and prohibited steps orders. It is unclear what a kinship care order would add by way of advantage to the child's welfare.

Similarly, there may be circumstances in which kinship care arises because of a short- or medium-term impairment of a parent's ability to care for a child due to some form of parental deficit, but the prospects of the child's rehabilitation to parental care are so good as to mean that, in the words of the consultation, *'it is known that the parents will resume care of the child after that time'*. Again, in such circumstances, it is unclear why a kinship care order would be necessary or what it would add to the orders currently available under s.8 CA 1989.

In summary, the ALC does not recognise a gap in the legislation or any disadvantage to children's welfare from the current suite of orders available to cater for the situation envisaged by this question.

Time limited orders also give rise to the issue of what should happen when the order lapses. If an order is made for a limited period but then needs to be renewed, extended, or replaced with an order in different terms, an application would need to be made - and determined - promptly to avoid a cliff-edge where existing provisions under the initial order fall away before new arrangements are in place. Experience from the public law arena tells us that it can be difficult even for represented public authorities to ensure that time limited orders are renewed in a timely manner. It is likely to be particularly difficult for unrepresented kinship carers to navigate the court system and avoid kinship placements becoming unintentionally unregulated, and lapses in orders regulating placements could put children at risk.

Consultation Question 44: We provisionally propose that there should be no minimum period of appointment for a kinship guardian. Do consultees agree?

No. The ALC's view is that any short-term arrangement with a clear plan for a child's rehabilitation to parental care can be managed by way of orders pursuant to s.8 CA 1989. Conversely, any long-term kinship care arrangement is best managed by way of an order which has the permanency of lasting until the child is 18 (akin to an SGO).

However, if a kinship care order is introduced and is to be made for a duration of time fixed by the court, the ALC would agree that there should be no minimum period for this. If a variability of duration is to be available, the court should not be fettered in its ability to fix the period appropriate for the child's welfare.

Consultation Question 45: We provisionally propose that it should be possible for the court to make an interim kinship care order, which would (1) have effect for a period specified in the order, which would be no longer than a maximum period to be set out in statute; and (2) automatically cease upon the earlier of the disposal of the application for a kinship care order by the court, or the child reaching the age of 18. Do consultees agree?

No. The ALC again queries what purpose an interim order serves which cannot be met by the current availability of s.8 CA 1989 orders, pending the making of an SGO.

The only additional benefit which it appears may be conferred by an interim kinship care order are: (1) the ability to confer enhanced parental responsibility to the kinship carer in the interim; and (2) the potential that there would be a requirement for the family's need for support to be assessed at the interim stage.

In relation to (1), it is difficult to envisage the circumstances in which such enhanced parental responsibility would be required in the short-term, while proceedings are ongoing, and before any final decisions are made. However, if it is required, the same outcome can be achieved by way of orders pursuant to s.8 CA 1989.

In relation to (2), it is unclear whether, and to what extent, it is proposed that an assessment of the family's need for support would be required before the making of an interim order. It is presumed that this would not be akin to the proposed requirements when making a final order, given the time that any such assessment takes. As such, it is difficult to see how this benefits children.

Consultation Question 46: We ask consultees for their views on whether the provisionally proposed maximum duration of an interim kinship care order should be: (1) 8 weeks; (2) 16 weeks; (3) 26 weeks; or (4) some other period. If you wish to, please give reasons for your answer below.

For the reasons set out above, the ALC does not agree that an interim kinship care order is necessary or beneficial.

However, if such an order is to be introduced, the ALC has concerns about introducing a mandatory maximum timeframe which is too short and which would necessitate frequent returns to court. Given many, although not all, kinship care orders are likely to be made within care proceedings, it may be that the 26-week period is appropriate.

Consultation Question 47: We provisionally propose that (1) a child may not apply to vary or discharge a kinship care order of which they are the subject without the permission of the court; and (2) the court may only grant permission to make such an application if it is satisfied that the child has sufficient understanding to make the proposed application. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all.

If the KCO's are introduced then yes the ALC agrees. This would accord with the approach taken in relation to applications by children for other orders in respect of their welfare (see, for example: s.14A(3)(b) CA 1989, s.10(8) CA 1989, s.43 Family Law Act 1996).

Consultation Question 48: We provisionally propose that the court should, when making a kinship care order, consider whether the best interests of the child require an order to be made under section 91(14) of the Children Act 1989, placing restrictions on the making of applications (1) to vary the order; (2) to discharge the order; or (3) seeking a direction about how the provisions of the order should operate by any person other than the kinship guardian. An order under section 91(14) of the Children Act 1989 would have effect for a fixed period, and would prevent a named person from applying to vary or discharge the kinship care order, or to seek a direction about how it should operate, without first obtaining the permission of the court. Do consultees agree?

No. The ALC does not agree that there should be a statutory requirement for the court to consider making a s.91(14) CA 1989 order in every case.

The use of such an order is a tool which is available to the court when making any order in respect of a child's welfare. The use of such orders has been liberalised by virtue of the introduction of s.91A CA 1989. However, PD12Q makes clear that '*the court has a discretion to determine the circumstances in which an order would be appropriate*' (paragraph 2.2). The ALC does not identify any welfare need to impose an obligation on the court to consider such an order in *every* case.

Consultation Question 49: We provisionally propose that the making of a care order in relation to a child who is the subject of a kinship care order should not automatically discharge the kinship care order. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all.

If KCOs are introduced then yes. The ALC agrees with this proposal for two reasons. First, it reflects the position in relation to SGOs, following the reasoning of the Court of Appeal in ***Re F & G (Discharge of Special Guardianship Order)* [2021] EWCA Civ 622**. The ALC identifies no reason why the position should be any different in respect of a kinship care order.

Second, a kinship care order will have been made because it is intended that the kinship carer would be adopting a full-time parental role for the child, whether for the medium- or the long-term. If circumstances arise which lead to a local authority issuing care proceedings and the making of an interim or final care order, there are good reasons for that kinship carer to continue to be treated formally in a parental role *vis-à-vis* the child (see ***Re F & G***, at [45]-[47]). Moreover, in no particular order:

1. It recognises that, for the child, the relationship between them and their kinship carer does not suddenly end, merely because an interim or final care order has been made.
2. In reflecting the ongoing relationship between the child and their kinship carer, it requires the local authority actively to consider the prospect of rehabilitation to the care of the kinship carer and the support which may be necessary for that to occur.
3. In reflecting the ongoing relationship between the child and their kinship carer, it emphasises the importance of the local authority considering arrangements for contact between the child and their kinship carer.
4. It enables that carer to retain parental responsibility for the child, and therefore to be involved in decisions made about the child both within the court process and the looked-after child framework.

Consultation Question 50: We provisionally propose that the court may vary or discharge a kinship care order upon the application of a local authority designated in a care order with respect to the child. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all.

If the KCOs are introduced then yes, this replicates the position in relation to a special guardianship order and there is no reason to differentiate between the two orders.

Consultation Question 51: We invite consultees' views as to whether it should be possible for a kinship care order to contain provisions for a review of the order, or of any named provisions (such as a parental involvement provision) contained in the order, after a period specified when the order is made.

The ALC does not agree that KCOs should be introduced at all.

The ALC urges caution in relation to this proposal. We share the concerns documented at paragraph 8.116 of the consultation paper, namely that time-specific reviews risk rendering the stability of the placement 'precarious'. A kinship care order that is subject to a calendared review date sends a signal — to the child, the kinship carer, and the birth parents — that the arrangement is provisional rather than settled. This is fundamentally at odds with the permanence that long-term kinship placements are intended to provide.

In contrast, and as addressed elsewhere in our response, short- or medium-term kinship arrangements with a clear plan for the child to return to their parents' care need not be regulated by way of a kinship care order (or even a special guardianship order), but can be regulated by way of a child arrangements order with other associated s.8 CA 1989 orders as required.

Further, routine time-based reviews would also generate satellite litigation and place additional burdens on an already stretched family court system. Each review would require preparation, assessment, and court time, and would provide a focal point for renewed challenge by birth parents, even where the placement is functioning well. The child's experience would be one of recurring uncertainty as each review date approaches.

The proposed approach would also be contrary to clear trajectory in private law proceedings (through the Child Arrangements Programme, the new Child-Focused Courts, and guidance promulgated by the President of the Family Division) away from review hearings.

If any review mechanism is to be included, we strongly favour one that is condition-based rather than time-based. The court might, for example, provide that a particular provision of the order — such as a parental involvement provision — should be reviewed if a specified change of circumstance occurs. This would allow for necessary flexibility without building periodic instability into the structure of the order.

The ALC submits that the existing statutory scheme already provides a mechanism for revisiting orders where circumstances change: any person with standing may apply to vary or discharge the order, subject to any section 91(14) restriction. A separate review mechanism layered on top of this would add complexity without a corresponding benefit to the child.

Consultation Question 52: We ask for consultees' views on (1) how a kinship care order could operate in a case where the kinship carers live overseas; and (2) how any problems with the use of kinship care orders in an international context could be avoided.

The consultation paper rightly identifies that special guardianship orders can face difficulties in terms of international recognition, particularly in jurisdictions that are unfamiliar with the concept. The ALC notes that these same difficulties would apply with at least equal force to a kinship care order, which would be an entirely novel legal instrument with no equivalent in any other jurisdiction. A foreign court or authority faced with a kinship care order would have no frame of reference within which to understand or give effect to it. The fact that a KCO has so many facets of type of order and powers within it makes it far less able to be understood by a foreign court than an SGO, the ALC submits.

Far from solving the international recognition problems associated with SGOs, the introduction of a new and unfamiliar order would compound them. This is doubly so given the proposed bespoke nature of each KCO. It is our members experience that foreign courts are able to obtain expert advice or evidence as to the powers of an SGO where that is necessary; there are many jurisdictions where there are parallel orders. What is not likely to be possible is a generic explanation of the nature and powers of a KCO, as that would vary from child to child. This also has negative implications for immigration authorities in other jurisdictions when they are attempting to make a decision about a child's immigration application if moving abroad to live with a kinship care under a KCO. There can be no certainty that that class of order [a KCO] is permanent or conveys anything about the future plans for the child. At least an SGO is a permanence order which in our members experience is readily understood with some limited research or advice.

Consultation Question 53: We ask for consultees' views as to the court process to be followed when an application is made for a kinship care order.

The ALC does not agree that KCOs should be introduced at all.

It appears to the ALC that the kinship care order is intended in many ways to replicate (albeit it might be said improving upon) a special guardianship order. The ALC sees no need for a new, distinct court process for such an order and suggests that the same framework as is currently in place for an application for an SGO should be adopted.

The ALC has no observations on the appropriate level of judiciary to which applications for a kinship care order should be allocated, save to note that there appears to be no justification for treating such applications differently from those for an SGO.

Consultation Question 54 We ask for consultees' views as to the process which should be used to assess the suitability of the proposed arrangement to meet the child's needs, when an application is made for a kinship care order. In particular, we ask for consultees' views on (1) who should prepare any such assessment or report; (2) whether there should be a requirement to notify the local authority before an application for a kinship care order is made, and, if so, what that should be; and (3) the matters which should be covered by any assessment or report, and the extent to which these should be variable depending on the characteristics of the kinship care order sought.

The ALC does not agree that KCOs should be introduced at all.

The ALC considers that any assessment of the suitability of a proposed kinship care arrangement must be prepared by a qualified social worker, whether employed by the local authority or by Cafcass/Cafcass Cymru. The assessment of a child's needs and the capacity of a proposed carer to meet them is a professional task that requires training, expertise, and accountability. The ALC would not support any dilution of this requirement which is currently in place for an SGO.

The ALC supports a requirement for the applicant to notify the local authority before an application for a kinship care order is made. While a notice period reduces the ability of a kinship carer to obtain an order quickly with the consent of the parents, notification serves several important functions. It enables the local authority to conduct checks and assessments, to identify any safeguarding concerns, and to consider what support may be needed. A notice period of at least three months, consistent with the existing requirement for special guardianship orders, would appear to be appropriate and commensurate with the usual timescales for preparing special guardianship assessments.

The ALC is concerned that the KCO regime should not leave room for a local authority to decline to provide a report or support plan on the basis of a preliminary view that the type of KCO required is more akin to a CAO than an SGO. This could become both a route by which local authorities could avoid their responsibilities to kinship carers and children and a source of delay while allocation of reporting responsibility is determined.

The ALC is concerned that a system of two or three types of assessment containing escalating levels of scrutiny, which the court could adopt depending on the situation, will cause delay. For example, where one level of assessment is initially directed and prepared, but proves inadequate, and has to be upgraded to a more detailed assessment. It is also unclear how applications for a KCO made in a private law context would be accommodated within or alongside the Child Focused Court regime.

The ALC sees no reason why the matters covered by the assessment should not mirror those covered by a special guardianship assessment (as set out in the Special Guardianship Regulations 2005). These include, in broad terms, the child's physical, emotional, and educational needs, the carer's capacity to meet those needs, the child's wishes and feelings; the likely effect on the child of the proposed arrangement, any risk factors, the necessity and proportionality of the order, and future contact arrangements.

The ALC observes once more that these protections already exist within the special guardianship framework. Replicating them for a kinship care order is an exercise in duplication that consumes resources without any obvious benefit for children and families.

Consultation Question 55: We ask for consultees' views as to how best to ensure that the child's views are heard, both at the time the kinship care order is made and subsequently.

The voice of the child must be at the centre of any proceedings concerning a kinship care order, both at the point of making the order and throughout its duration. Any assessments for a KCO must have a clear section requiring the assessor to explore the child's wishes, feelings, needs and provide a voice to the child where they can articulate their views about their care and their perception of their permanence.

The ALC does not see any reason why the mechanism for obtaining the child's views and conveying them to the court in an application for (or to vary or discharge) a special guardianship order should not

apply equally to a kinship care order. These include an initial report by a social worker who is required to meet with the child, the availability of a section 7 report on any application to vary or discharge the order, and the possibility of joining the child as a party to proceedings. Where a KCO is made in the course of care proceedings the child should be a party and represented.

Further, where the local authority remains involved in providing support, it should have regard to the child's evolving views as part of any review of the support plan.

Consultation Question 56: We ask for consultees' views on whether, when care proceedings are brought by a local authority and the court is considering whether to make a kinship care order within those proceedings: (1) the potential kinship guardian should automatically be granted party status within the care proceedings; or (2) the court should be required to consider at an early stage whether to make the potential kinship guardian a party to the proceedings.

The ALC does not agree that KCOs should be introduced at all.

If KCO's are introduced then the ALC supports option (2), namely that the court should be required to consider at an early stage whether to make the potential kinship guardian a party to the care proceedings. This ensures that the kinship carer's position is properly considered and that they have the opportunity to participate meaningfully in proceedings that will determine the child's future.

The ALC does not support automatic party status for all potential kinship guardians. While many kinship carers will and should be joined as parties, automatic joinder in every case may not be proportionate. In some cases, the potential carer may have been identified only provisionally, the viability assessment may not yet be complete, or the carer may not wish to be a party. Automatic party status could also increase the number of parties in already complex proceedings, with consequential effects on court time, legal aid costs, and the duration of proceedings.

Moreover, automatic joinder of potential kinship carers may impose an unhelpful and unnecessary burden on those individuals, bringing with it the pressures and obligations of being involved in family proceedings. In particular, this risks drawing kinship carers into contested proceedings which may undermine future working relationships within the family. It is also unclear whether such individuals would be entitled to legal aid.

Early judicial consideration provides a mechanism that is both protective of the kinship carer's rights and sensitive to the circumstances of the individual case. The court can take account of the stage the assessment has reached, the carer's wishes, the likely issues in the proceedings, and the role in the proceedings which the kinship care would play before deciding whether joinder is appropriate.

What follows from all of this is the necessity for proper and adequate non means tested funding for kinship carers in this situation. Moreover, the need for adequate legal funding arises for kinship carers when a parent makes an application for discharge or variation of an SGO and an application for contact or other section 8 order. To date, this is woefully neglected in the legal aid funding regime. Equivalent protections for carers are required if KCOs are introduced as these orders will have more ongoing court involvement and flash points for relitigating matters.

Consultation Question 57: We provisionally propose that when a kinship care order is in force in

relation to a child, no person shall be permitted to apply for (1) a special guardianship order; (2) or a child arrangements order; in relation to that child. As an exception to this rule, a person may apply for such a special guardianship order or a child arrangements order at the same time as they make an application to discharge the kinship care order, and replace it with the order sought. Do consultees agree?

The ALC reiterates its view that the introduction of a kinship care order is unnecessary and unhelpful, for all of the reasons set out above.

However, if such an order is to be introduced and it is intended to be comprehensive in relation to the governing of kinship care arrangements, the ALC understands the intention to limit other applications which might be made. Any such limitation would need to ensure that: (a) this does not limit the potential of others to apply to vary elements of the kinship care order (including contact and matters of parental responsibility); and (b) it is plain that such applications are permitted when an application to discharge the order is made.

Consultation Question 58: We provisionally propose that when a kinship care order is in force in relation to a child, no person shall be permitted to apply for (1) a prohibited steps order; or (2) a specific issue order; in relation to that child. Do consultees agree?

No. The ALC does not agree that there is a welfare need or any other principled reason for prohibiting a child's parent from applying for an order in relation to the exercise of parental responsibility in relation to the child.

As above, the ALC recognises that the kinship care order is intended to govern all matters relating to contact and parental responsibility concerning the child. As such, the ALC understands the inclination to limit all disputes about parental responsibility to the parental responsibility provisions of the kinship care order.

However, the ALC considers that the position in relation to prohibited steps and specific issue orders is different. They are important and flexible tools that serve the child's welfare in a wide range of circumstances. They are often used in urgent situations to determine specific and discrete issues relating to parental responsibility. In such circumstances, there is a real risk that limiting their use introduces unnecessary confusion and removes a valuable tool for the court to safeguard a child's welfare.

For example, it would appear unhelpful, and potentially destabilising, for the entirety of the parental responsibility provisions of a kinship care order to be re-opened so as to resolve a discrete issue in relation to, for example, unexpected, serious medical treatment. There is a benefit to such a matter being resolved separately from the kinship care order.

Consultation Question 59: We provisionally propose that, if kinship care orders are introduced, a kinship carer (as defined in our proposed definition) should no longer be able to apply for a special guardianship order in relation to the child for whom they are caring. Do consultees agree?

The ALC maintains its primary position that the introduction of a kinship care order is both unnecessary and unhelpful.

However, if such an order is introduced, the ALC opposes the proposal that those eligible to apply for such an order would be prohibited from applying for an SGO. Notwithstanding the ALC's view that a kinship care order is an unnecessary duplication of an SGO, it is presumed that a kinship care order would be being introduced because it seen as a different remedy. If so, the ALC does not consider it appropriate to limit the ability of a kinship carer to apply for an SGO. They should be entitled to apply for whichever order they consider best meets their circumstances and the child's welfare. So too should the court be able to make whichever orders best meets the child's welfare needs.

Consultation Question 60: We provisionally propose that, if kinship care orders are introduced, it should no longer be possible for kinship carers (as defined in our proposed definition) to apply for a 'live with' or 'spend time with' child arrangements order. Do consultees agree?

No. This would mean that every person who falls within the definition of a kinship carer, for however short a period of time, would be able only to apply for a kinship care order. This deprives them, and more importantly the child, of a flexible tool to govern the arrangements for the child.

While the availability of a single order for kinship carers may be perceived as straightforward and easy to understand, the ALC can identify no benefit to children in kinship care arrangements of this limitation.

Consultation Question 61: We provisionally propose that if kinship care orders are introduced, when an application for permission to discharge or vary a special guardianship order is made by (1) a parent; (2) a guardian; (3) a step-parent of the child who has parental responsibility for the child, or (4) a person who immediately prior to the making of the special guardianship order had (but no longer has) parental responsibility for the child. The requirement under section 14(D) of the Children Act 1989 that the applicant must satisfy the court that there has been a significant change in circumstances since the making of the special guardianship order should not apply where the applicant is seeking the permission of the court to discharge a special guardianship order and replace it with a kinship care order appointing the child's special guardian as a kinship guardian. Do consultees agree?

No. The ALC does not agree and fears that such a disapplication may mean that children who are currently in stable kinship care arrangements are subject to further litigation simply for the purpose of replacing one order (an SGO) with another (a kinship care order). If it is not intended that a kinship care order brings with it any greater level of financial or other support, it is difficult to see what benefit there is to a child of them being subject to further litigation in such circumstances.

Consultation Question 62: We provisionally propose that a care order in relation to a child should be discharged by the making of a final kinship care order. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all.

If KCO's are introduced then the ALC agrees this is appropriate for the same reasons that it is the effect of making an SGO or a child arrangements order.

Consultation Question 63: We provisionally propose that a care order in relation to a child should not be discharged by the making of an interim kinship care order. Do consultees agree?

The ALC does not agree that KCOs should be introduced at all.

If KCO's are introduced then the ALC agrees. It would undermine the intention behind an interim kinship care order if the making of it automatically discharged a care order.

The interim order, by its nature, reflects a provisional arrangement that has not yet been subject to the full scrutiny of a final hearing. The oversight afforded by the care order, including, for example, the local authority's duty to safeguard and promote the child's welfare under section 22(3) of the Children Act 1989, must not be removed until the court has made a final determination.

Premature discharge of a care order at the interim stage would leave children without the statutory protections that attend looked-after status at precisely the point when the viability and safety of the kinship placement are still being assessed.

Consultation Question 64: We provisionally propose that, if a care order and an interim kinship care order are in force at the same time, the court should when making the interim care order determine how parental responsibility is to be exercised by either the local authority, the parents, the kinship guardian or anyone else with parental responsibility. Do consultees agree?

No. This would weaken the provisions of s.33 CA 1989 which provide the local authority with the power to make decisions to the exclusion of those with parental responsibility. At the interim stage, pending full assessment or the court's final welfare decision, the ALC does not consider that this is appropriate. This would not prevent the local authority from delegating some day-to-day decision-making to the carers, as it would to any person caring for a child under a care order.

Consultation Question 65: We provisionally propose that (1) it should be possible for the court to make a supervision order at the same time as making an interim kinship care order, and (2) the duration of the supervision order should not be limited by the duration of the interim kinship care order. Do consultees agree?

We observe that the making of a supervision order alongside an interim KCO would necessarily be limited to public law proceedings and the court being satisfied that the threshold for making such a public law order is met.

The ALC does not agree that KCOs should be introduced at all.

If KCOs are introduced then the ALC agrees with both aspects of this proposal save that we submit the court would typically make an interim rather than final supervision order. Making a final supervision order would determine the local authority's application, which in many cases will not be appropriate when final welfare determinations have yet to be made.

The availability of a supervision order alongside an interim kinship care order provides an important mechanism for the court to ensure that the local authority maintains oversight of the child's welfare during the assessment period. There will be cases in which the court is satisfied that the child should be placed with the kinship carer on an interim basis but is not yet satisfied that ongoing monitoring is

unnecessary. A supervision order meets this need.

The ALC also agrees that the duration of the supervision order should not be tied to the duration of the interim kinship care order. The need for the supervision order and the interim placement need may not align in duration. The court should have the flexibility to tailor each order to the child's individual circumstances.

Consultation Question 66: We invite any other views which consultees may have on the involvement of a local authority when an interim or final kinship care order is made.

The ALC does not agree that KCOs should be introduced at all.

If KCOs are introduced then the ALC reiterates its view that the local authority should be as involved, not less involved, in the process of applying for, making, and supporting an interim or final kinship care order.

The ALC has set out its clear view that the introduction of a kinship care order is unnecessary and unhelpful. The real deficit identified by kinship carers and practitioners is not the absence of a new legal order but the chronic inadequacy of local authority support and funding for kinship placements. The consultation paper records extensive evidence of inconsistent financial support, poor access to therapeutic services, and inadequate assessment of carers' needs. These cannot be remedied by creating a kinship care order, however they can be made worse if the involvement of local authorities is reduced.

Consultation Question 68: We ask consultees to tell us if they believe or have evidence or data to suggest that (1) the operation of the current law governing kinship care; or (2) the provisional proposals which we make in this consultation paper results, or would if the law were reformed in the way we provisionally propose result, in advantages or disadvantages to certain groups or based on certain characteristics (with particular attention to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

The ALC believes that the introduction of Kinship PR agreements will disproportionately and negatively impact women who are victims of domestic abuse and/or women and children caught up in coercive and/or abusive family structures.

Consultation Question 69: We ask for consultees' views on how any disparities in the operation of the current law governing kinship care could be reduced or removed.

Presently, disparities largely flow from the type of order or arrangement that is in place. This is necessarily so – a delegation of PR is a more informal, short term arrangement and should be approached differently to a longer-term formal arrangement under a 'lives with' child arrangement order and a permanent special guardianship order. Access to resources is endemic issue which, the ALC submits, will not be remedied by amending the legal framework concerning kinship care.

Better access to legal aid for parents and carers in kinship care arrangements and early engagement in court proceedings of the kinship carers are likely to produce better informed outcomes and more nuanced regimes of orders for the child in question.

The financial support packages for kinship carers ought to mirror the packages of support services and financial support available to adoptive carers. The extent of funding for the support services and financial support for SGOs should be reviewed with a view to the length of time financial support is made available being bespoke to the child and family and not time limited by 3 years as standard. This will require significant investment to local authorities in the spending review.

Consultation Question 70: We ask consultees to tell us anything relating to their experiences of kinship care arrangements, or our provisionally proposed reforms, that they have not yet had a chance to express in response to earlier consultation questions.

Whilst not within the scope of this consultation, in our members' experience, the fundamental difficulty undermining many kinship care arrangements concerns resources and, in particular, access to specialist support for the children in their care. There is huge pressure on the system, including significant waiting lists for CAMHS. The disparity in approach between different local authorities creates additional difficulty. This is particularly so for kinship carers assessed by one local authority but living in the area of another local authority and thus having to navigate multiple agencies to access support. National guidance and minimum rates of support would provide greater consistency. Further, once a child is moved out of being a looked after child into a kinship arrangement, the changed legal status negatively affects the priority to access CAMHS and therapeutic services within the NHS. The child's needs have not changed, nor has their experience of trauma simply that they have found a home in their family and have had a permanence order like an SGO made. Children who have left care onto SGOs and other kinship type orders should retain LAC priority status in mental health services, the ALC submits.