

Evidence to the Law Commission's Kinship Care Consultation

Introduction

[Support Not Separation](#) (SNS) co-ordinated by Legal Action for Women) includes organisations of single mothers, women of colour, women with disabilities, rape/domestic abuse survivors, breastfeeding advocates, psychotherapists, men and social workers. We defend mothers and children against unwarranted separation and the devaluing of the mother-child bond. We are in contact with hundreds of mothers and other primary carers, and children, family law professionals, organisations and concerned individuals.

In January 2017, Legal Action for Women published our Dossier [Suffer the Little Children & their Mothers](#) which documented 56 cases of mothers fighting in the family courts to stop violent fathers having unsupervised contact or residence of children, and against children being forcibly taken into care and/or adopted. In our most recent [research](#) (July 2026), the majority (94%) were single mothers, 74% had reported domestic abuse and many had been accused of “parental alienation” in family court when they reported the violence, 34% were women of colour, 42% were disabled women and 14% have children who were adopted without parental consent.

Our evidence is based on extensive collective self-help casework with hundreds of women and on campaigning. We run monthly self-help meetings where mothers share their experiences, and a number of organisations contribute their expertise. They are: All African Women's Group, English Collective of Prostitutes, Global Women's Strike (GWS), Women of Colour GWS, Single Mothers' Self- Defence, WinVisible (women with visible and invisible disabilities) and Women Against Rape.

[The Disabled Mothers' Rights Campaign \(DMRC\)](#), co-ordinated by WinVisible (women with visible & invisible disabilities) brings diverse disabled mothers together to defend our right to have and to keep our children. We campaign to stop the cruelty and discrimination we face from maternity services, social services and the family courts which use mothers' requests for the council support we are entitled to, as an excuse to label us “unfit” and take our children from us. DMRC is part of the SNS coalition.

We work closely with the [Scottish Kinship Care Alliance](#) who campaign for financial parity, recognition and justice for kinship carers. We have worked with many mothers who have tried (and too often failed) to keep children within their extended families, and we know how extensive the harm is done to children taken into the care of local authorities.

Consultation

In response to the Law Commission (LC) Kinship Care consultation we make the following points, as well as our recommendations for change.

• Proposal for a new Kinship Care Order (KCO)

Over 180,000 children in England and Wales are being raised by kinship carers; the vast majority, [nearly 90%](#), are cared for outside of formal care proceedings. We recognise (as does the LC) that kinship carers are often frustrated and hampered by lack of official parental responsibility for the children in their care especially when there is an informal arrangement. This could easily be resolved by having a written agreement drawn up by a family lawyer giving the kinship carer temporary parental responsibility rather than introducing a whole new bureaucratic court procedure through a KCO. Where a more formal relationship is considered desirable or necessary, the kinship carer could get a SGO.

Allowing kinship carers to apply to court for a KCO **which would be virtually identical to a Special Guardianship Order (SGO)** does **NOTHING** to address the crisis of poverty and financial hardship faced by the majority of kinship carers, which is invariably their primary concern.

The LC does not acknowledge and therefore does not address the crucial issue raised over and over again by kinship carers which is that they don't have enough money to care for the children and are forced to live in poverty, rely on the use of [food banks](#) and live in extremely cramped accommodation including sleeping on sofas so children can have a bed. **Kinship carers get little support, forcing many to lose jobs, pensions, savings and even their own retirement to keep a child they love out of the care system often with [very little notice](#) and under the threat of adoption** if they do not respond quickly enough. Many are older grandparents, especially grandmothers, retired and living on limited pensions with an even greater financial responsibility if the children are disabled. Sometimes, a grandmother has had to assume responsibility for a grandchild because the disabled mother has been denied proper care and support services in her own right from the council, which she is entitled to under the adult **Care Act s12** (needs of the family) and **Children Act s17**. Disabled mothers then live with the pain of seeing their child brought up by another out of reach. **A KCO avoids all of these crucial issues.**

Kinship care should always allow for the possibility of a mother's situation changing so that she can get the children back and care for them. Both **the proposed KCO** which would place children with relatives until they turn 18, **and existing SGOs, undermine the rights of mothers who may just need support for a short time, and limit their possibilities for reunification.** At present it is harder to get a child home from an SGO than if they were in foster care: courts only grant reunification from an SGO if the carer agrees and if there has been a breakdown in the relationship between the mother and carer. In our experience, this is used to stop children being reunited with their mothers because **the carer's wishes are given priority in court over the mother's, and in some cases, the children's wishes.** **A KCO would replicate these issues.**

Under the proposals, a KCO would give the kinship carer a 'Lives with Order' which lasts until a child is at least 16. If a mother's circumstances changed or if she wanted to change contact arrangements (which are usually at the discretion of the carer) she would have to apply to court. There would be no legal aid to do this as currently only domestic abuse victims are eligible and many areas of the country now face what are called [Legal Aid Deserts](#). **By introducing court proceedings into previously informal kinship care arrangements, the LC is promoting an adversarial court process.** Mothers who are litigants in person would be disadvantaged if facing wealthier relatives who might be able to afford expensive lawyers and could use this disadvantage to effectively remove a child against a mother's wishes. Without legal aid mothers could not afford to bring experts into the court to challenge claims made against them or to show changes in their situation which would mean the children should be returned. **Legal aid must be a statutory entitlement.**

This process would do nothing to encourage reunification with the mother/birth family which the present informal arrangements encourage.

- **Proposal that mothers who wish to retain full parental responsibility and contact rights would have to apply for a court order and that kinship carers should be granted Prohibited Steps Orders to limit these rights.**

We strongly oppose the proposal that mothers should be forced to apply to court if there was a disagreement about how often they could have contact with their children. **We do not agree that**

KCOs should be accompanied by Prohibited Steps Orders to limit a mother's parental responsibility and contact with children as the LC proposes. At present informal arrangements can be made and mothers can enjoy family time with their children, including with carers. Any disruption to this by courts restricting contact could potentially cause long-lasting breakdown in family relationships.

- **Proposal to limit a mother's rights by increasing the use of Section 91A orders to bar mothers going back to court.**

We are totally opposed to the heavy-handed way current Section 91A orders are used, for example to stop mothers going back into court when they are in dispute with their ex-partners, especially when there has been domestic abuse.

We oppose any further use of these orders which would be at the discretion of individual judges.

S91A orders should remain limited to those who make multiple repeated spurious applications and not used, as the proposal suggests from the beginning of a KCO. The goal should always be reunification which these orders limit.

- **Proposal for a new 'Kinship Foster Care Order'.**

We are strongly opposed to Kinship Foster Care orders. When children are taken into care, mothers have no say who the foster carer will be but can put forward a friend or relative to be a kinship carer. To encourage foster carers to have full parental responsibility and to give them the right to refuse contact if they deem it not in the best interests of the child contradicts the basic premise of kinship care which should be extended family or friends known to the children. Children in foster care might be moved hundreds of miles away from their community, family and friends so this proposal would take away the rights of the child to live within their community.

- **Kinship Zones**

Earlier this year, the government launched [a three-year pilot scheme](#) in seven local authorities giving kinship carers a financial allowance in line with foster carers for the first time, covering 5,000 children. The LC refers to the pilot without commenting on it. In fact, if the pilot continues and is extended across more areas (which is not guaranteed) it will only apply to children who have been in the care system – i.e. only 10% of foster carers will be eligible. This is unacceptable.

THE LAW COMMISSION MUST CONSIDER THE FOLLOWING RECOMMENDATIONS

- We urge the LC to **recommend that ALL kinship carers**, whether the children have been through care proceedings or are with them on an informal arrangement, **should receive financial parity with foster carers**. They should receive the same money and advantages, such as [exemptions from council taxes](#) and house extensions paid for by the state to accommodate more children, that are currently available to foster carers. Payments to kinship carers must include all the hidden extras such as birthday and Christmas money. **These payments must NOT be means tested.**
- **Section 17 of the Children Act must be made a statutory requirement**, just as Section 47 of the Act is. Spending on providing support for [children in care](#) is rising at a rate of £1 billion a year. It is unacceptable that instead of addressing systemic problems and mandating resources

to keep children with their mothers, billions of pounds are being spent on removing children, money that could be spent on keeping families together.

- **Disabled mothers must have support under the Care Act to keep our children**, and automatic “safeguarding” referrals when mothers ask for help must stop.
- **Kinship carers must be given priority for local housing**, especially larger homes so that the children would have their own rooms and carers would not be sleeping on sofas.
- **Disabled kinship carers who receive homecare must be [exempt](#) from homecare charges** for adult social care.
- **There should be no age discrimination against grandparents as kinship carers.** We know that [foster carers](#) in their 80s are allowed to foster children while grandparents in their 60s have been deemed too old for a SGO.
- **The procedure for discharging a KCO or a SGO order should be made easier** so that the focus can remain for the children to be able to return home to their mothers.
- **Arrangements for contact with immediate birth families and siblings must be encouraged** as a priority.
- **All carers should have a [Care Income Now](#).**

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