

# A LEGAL OPTION IN KINSHIP CARE

## Kinship Care Order



### What is Kinship Care?

A Kinship Carer is the term used to describe a person who looks after a child, when they are not able to live with their parents. They may be related to the child (through blood, marriage, or civil partnership) or person with whom the child has a pre-existing relationship.

There are lots of reasons why children may come to live in a kinship arrangement, sometimes this happens on a planned basis or it may be in response to concerns about the child's care which means it is not safe for them to live with their parents.

Aberdeen City Council values and respects the unique role played by kinship carers. Often, children living in Kinship Care arrangements generally have better outcomes than alternative care settings. Often the child experiences less disruption in their life, they do better in education, have a stronger sense of identity and more meaningful contact with parents and other family members.

### Why are Legal Orders important?

A sense of belonging and legal permanence is very important for a child. Securing a child's place of residence can provide a child with a sense of belonging and lets them know where they will spend the remainder of their childhood. Legal Orders can also give the Kinship Carers Parental Rights and Responsibilities which are important in many aspects of a child's day-to-day life, decision making and aids normalising a child's care experience.

There are several legal orders which will be considered for a child and their individual care plans will make recommendations about what is in their best interests. These may include remaining on a Compulsory Supervision Order, Permanence Order, Adoption, Residence Order/ Kinship Care Order. Each situation will be unique to each child, it is important that Kinship carers feel informed about legal options.

This leaflet seeks to provide an overview of the Kinship Care Order.

## **What is a Kinship Care Order?**

A Kinship Care Order is found in the Children and Young People (Scotland) Act 2014.

A Kinship Care Order is a Section 11 Order (Residence Order) from the Children (Scotland) Act 1995 Section 1 and would be sought by a private solicitor on behalf of a kinship carer.

It grants

- all or some parental rights and responsibilities
- a residence order deciding where the child stays
- guardianship.

To receive a Kinship Care Order, you must be a Kinship Carer, looking after the child at the time of making an application.

The purpose of a Kinship Care Order can ensure a more stable home for the child. Having parental responsibilities and rights will allow the kinship carer to make a range of decisions in relation to a child's day to day life. Where a parent retains parental rights, at times this may cause difficulties for the child and the carer.

### **Some of the benefits of the order include.**

- The child has a greater sense of security and a feeling that they belong.
- The child is removed from the Looked After Care System, the Children's Hearing System and LAC Review System
- You can consent to medical procedures, apply for a passport for the child and take them out of the country on holiday.
- Kinship carer is awarded greater authority and can make decisions on his or her behalf, e.g., consent to medical and dental treatment for the child; consent to educational support, how the child is schooled, what happens to the child's money or property.
- Birth parents may have reduced parental responsibilities and rights; with the right to residence removed.

### **It has been recommended that I seek a Kinship Order for the child I look after, now what?**

It is important, you as the kinship carer, have a good understanding of this recommendation and the purpose and rights and responsibilities of a Kinship Order. You should discuss with the child's social worker and/ or Kinship Worker how this relates to the child you care for and share your views in this respect honestly.

Prior to proceeding with any action, it is important you have a clear understanding of the Rights and Responsibilities this affords you as the carer and the child. In addition to the right of Residence you may wish to consider the appropriateness of gaining Parental Rights and Responsibilities for the child, taking action to remove parental rights and responsibilities from the parents or making conditions around family contact.

An overview of what is involved in seeking a Kinship Order is provided below. Each circumstance is unique and as such will be considered on an individual basis. This leaflet is only relevant to children living in Kinship placements in Scotland. There are differences across boarded and specific advice will be required via the kinship team and local legal firms.

## Seeking Legal Advice

It is the right of any persons interacting with the Local Authority to seek independent legal advice. Should you as a kinship carer wish to do so, there are several family lawyers with knowledge of children and kinship carer nationally. It is important that you feel confident and well-informed in the advice provided by your chosen solicitor.

Children and Young people are entitled to advocacy and legal representation too.

Aberdeen Young Persons Rights Service is accessible to all young people in Kinship Placements, who originate from Aberdeen, regardless of their location and can be accessed directly via [YoungPersonsRights@aberdeencity.gov.uk](mailto:YoungPersonsRights@aberdeencity.gov.uk) or contacting Forrest Templeton on 07733179202 or Donna Simpson on 07876780877. A leaflet can be made available with further details.

There are also several independent advocacy services across the UK which can be accessed directly by families.

## How do I go about it? Where do I start?

Given it is an independent legal process, the following are important points to consider only. The Kinship Carer Advice Service and Citizens Advice Bureau will be able to provide independent advice (contact details below)

At this time Aberdeen City Council can not recommend named solicitors, therefore an internet search can be helpful. However, we are aware in Aberdeen that currently the only solicitors considering legal aid for such applications are, George Mathers, The Grant Smith Law Practice or the Civil Legal Assistance Office

A Kinship Order application or adoption would be lodged in the court where a child resides.

You may start by contacting solicitors in your local area, to explore whether they can assist in the application for a Kinship care order. You should ensure the firm is familiar with these applications and enquire about the process for applying for legal aid and the projected fee for an uncontested Order.

It is likely that you will be offered an initial consultation to meet with your chosen solicitor. During this meeting it is best to attend prepared to provide an overview of the circumstances around the child coming into your care, current arrangements, any conditions of contact and the legal status of the child.

Be prepared to maximise the initial appointment, you should take a copy of the Childs Birth certificate, relevant reports relating to the child, (which may include Childs Plan, Childrens Hearing Decisions, LAC Minutes, Kinship Assessment/ approval minute etc)

At the initial appointment explore your eligibility to Legal Aid. Regardless of whether the Order will be self-funded, or you wish to seek financial support, it is also advisable to request a written document which outlines a breakdown of costs for an uncontested Kinship Order to the point of completion.

You should be aware that if any persons with Parental Rights and Responsibilities lodges an action to contest a Kinship Order, this can be a protracted legal process and the costs significant. If financial support is provided by Aberdeen City Council, this is provided on an uncontested basis only.

Your chosen solicitor will provide the advice about the court order from this point and should be your main point of contact for any queries until the order is granted.

## **Will I get help with funding to support legal costs?**

Firstly, you must check your entitlement to Legal Aid, which is means tested and an assessment of income will be undertaken by the chosen legal firm.

If you are entitled to full Legal Aid this will cover the cost of the Kinship Order and you and the Local Authority will not have to finance any legal fees. In some cases, partial legal aid will be awarded.

If you are not entitled to full Legal Aid, you should get this in writing from the Legal Aid Board and provide this along with a quotation for an uncontested kinship order.

Should you want to explore your eligibility for financial assistance toward the cost of reasonable legal fees, the kinship team will review the documents and if this remains the most appropriate action, will submit a financial application to the service manager of the Alternative Family Care Service to consider any financial support that may be available.

**Where financial support is requested, you must wait for the outcome of this decision before providing further instruction to your solicitor. This may take up to 21 working days. If you fail to do so you may be liable for any legal fees incurred.**

In situations where an order may be contested by those with Parental Rights and Responsibilities, consideration for additional financial support is not automatic and the above steps would be repeated.

In some circumstances where financial support is agreed, a referral may be made to Aberdeen City Council Legal Service, who will review the documents and then tender appropriate legal firms. These firms have seven days to return with a quote. Aberdeen City Legal team will then decide which legal firm/solicitor to instruct on the kinship carers behalf. Eligible kinship carers will be informed that a referral is being made and receive additional information about the process involved.

**Please remember to wait for confirmation from the Kinship Team about financial support as you may find yourself liable for any legal costs due.**

## **Overview of process of applying for Kinship Order**

### **Applying to Court**

The solicitor will prepare and lodge an application on your behalf for a Kinship Order. Any application for an Order relating to Parental Rights and Responsibilities must be made under section 11 of the Children Act (Scotland) 1995.

If there is a dispute in respect of children and the action is being defended in the Sheriff Court, the next step in proceedings is a Child Welfare Hearing (CWH). The Sheriff may also order such a hearing in other instances where they consider it appropriate.

This is intended to bring about the quick resolution of disputes about children, proving that this can be done in a manner consistent with the child's welfare. All parties are required to attend the hearing personally and are under a duty to provide the Sheriff with as much information as possible so that he or she can take whatever steps necessary to deal with the matter.

It may be considered in the child's best interests that the Order stipulates certain conditions, this could be regarding contact or the removal of certain Parental Rights and Responsibilities held by the parents. Prior to proceeding with any action, it is important you have a clear understanding of the

Rights and Responsibilities this affords you as the carer and the child. This can be discussed with the child's social worker and your chosen solicitor regarding the safeguarding and protection of the child.

You should be aware that if any persons with Parental Rights and Responsibilities can contest a legal order being sought, this does not mean the order will not be granted, however it may mean a legal case is protracted legal process, and if self-funding this can be very expensive financially.

## **Applying to Court Hearings**

### **Options Hearing**

An Options Hearing is purely procedural, and the sheriff has no power to make an order. Instead, he/she is trying to make an informed decision as to what should be the next step in the court procedure. The Options Hearing is intended to give parties a chance to meet before the sheriff to ascertain if agreement can be reached without proceeding to a CWH or, if this is not possible, to focus the precise disagreement between parties.

### **Child Welfare Hearing**

A Child Welfare Hearing is an informal affair, intended to bring about the quick resolution of contact disputes, aiming to resolve the problem(s) and bring about agreement, if possible. A child welfare hearing is held in private, with only the parties and their legal representatives and the Sheriff usually being present. The child's welfare will be the court's paramount consideration.

The sheriff will ascertain from parties, or their solicitors if they are to be represented, what matters are in dispute in relation to the child. Parties provide the Sheriff with information relating to the issues in dispute.

Solicitors (or the party litigant) put each side's case to the Sheriff, then after discussion, if an agreement cannot be reached, the sheriff will set out a timetable how to proceed. The sheriff may make interim orders, or refers both parties to a family mediator, like Relationships Scotland.

If parties are unable to reach agreement, disputes may have to be decided at a 'proof hearing' where the parties give spoken evidence and are subject to cross examination, and where witnesses may also be called to the hearing to provide testimony or supply a written affidavit.

### **The Childs Views**

Under Section 11(7) of the Children Act (Scotland) 1995, the court shall, so far as it is practical, consider a child's age and maturity, and the court will give the child the opportunity to express his views and thoughts, should he wish to, and give due consideration and regard to those views the child expresses.

A child is also entitled to his own legal representation if necessary. The action is required to be intimated to the child, and his views must be taken into account by the court. Usually, a child aged 12 years or more will be considered by the Court to be considered of sufficient age and maturity however, it is possible for children younger than 12 years to present their views to the Court, if they have a formed view.

A child's views may have to be sought and represented in a number of different ways: The Sheriff may interview the child in Chambers privately, without parents or a third party being present, or the

child may be invited to attend the hearing, or a Curator Ad Litem may be appointed by the Court to obtain the child's views.

The most important factor in any decision by the court regarding children is the consideration of the child's/children's welfare – this is always paramount. The Court would also consider those involved in the application, i.e., the mother and father. The Courts would consider if those involved, are able, or will be able, to co-operate with sufficient willingness.

### **What happens when a Kinship Care Order is granted?**

A Kinship Carer Order will continue until the child is 16 years, where it is felt a child will be able to decide their own place of residence. In exceptional circumstances an order may continue past 16 years.

The Courts may also consider the arrangements for the parents to see their child/children; the Court may make a Contact Order.

You will be issued with a copy of the legal order, which can be used as proof in legal matters such as health, education, immigration etc.

### **Kinship Order and Legal Status**

Once a Kinship Care Order has been granted the child is no longer "looked after" by a Local Authority.

If a child does not have a Looked After Legal Status, this does not mean that the support from the social work service immediately ends. It is important that each child has a clear child's plan, and that each kinship carer has a support plan, even if this is going to be delivered by universal services.

A child's legal status may have bearing on their entitlement to some targeted support service and throughcare support. Please discuss this with the child social worker and/ or kinship worker if you have any questions.

If the child has been Looked After prior to an order being granted, you will continue to receive Kinship Allowance, whilst they remain in your fulltime care likely up to 18 years old. More detailed information is noted about eligibility to financial support within the Kinship Allowance Leaflet and Kinship Allowance Agreement.

Should you require advice and information in respect of the information or have queries about financial matters related to Legal Orders please contact the Kinship Team.

**Telephone:** 01224 694554

**Email:** [kinship@aberdeencity.gov.uk](mailto:kinship@aberdeencity.gov.uk)

**Address:**

Kinship Team, Alternative Family Care, Integrated Children and Family Service, Quarry Centre,  
Cummings Park Crescent, Aberdeen, AB16 7AS

## Are there any other services that can help?

The Local Authority is committed to ensuring that Kinship Carers have access to independent information in respect of the important role they undertake.

### Aberdeen Young Persons Rights

Email: [YoungPersonsRights@aberdeencity.gov.uk](mailto:YoungPersonsRights@aberdeencity.gov.uk)

Webpage: [aberdeengettingitright.org.uk/young-peoples-rights/](http://aberdeengettingitright.org.uk/young-peoples-rights/)

**Who Cares Scotland:** Call 0141 226 4441

**Together – Scottish Alliance for Children’s Rights:** Call 0131 337 9015

**Kinship Care Advice Service for Scotland** provides a free, impartial, and confidential helpline which gives advice and support on all matters relating to kinship. On range of matters including emotional support, Legal issues, Financial, Benefits, Welfare Rights, and provides workshops and training opportunities for carers and professionals.

**Helpline:** 0808 800 0006, open weekdays 10am-2.30pm Email: [kinship@adoptionuk.org.uk](mailto:kinship@adoptionuk.org.uk)

Facebook: <https://www.facebook.com/kinshipcarecas/> Website: <https://www.kinship.scot>

### Citizens Advice Bureau:

Advisors in every Citizens Advice Bureau in Scotland can provide advice and information about kinship care and they can also access additional, specialist advice where necessary.

Scotland: <https://www.citizensadvice.org.uk/scotland/> Advice Line: 0131 550 1000

England: <https://www.citizensadvice.org.uk/> Advice Line: 0800 144 8848

### Scottish Child Law Centre:

Provide free expert legal advice and information to children and young people, their families and carers, and professionals working for and with children by providing free expert legal advice and information through their advice line, email, and website.

Advice Line: 0131 667 6333

Webpage: [www.sclc.org.uk](http://www.sclc.org.uk)

**Scottish Legal Aid Board** Find out if you may qualify financially for legal assistance using the eligibility estimator

Webpage [www.slab.org.uk](http://www.slab.org.uk)

### Scottish Children’s Reporters Administration:

Information for Children’s, carers, parents and professionals about the Children’s Hearing System in Scotland and the various associated legal orders.

Webpage: <https://www.scra.gov.uk>