

# A Fighting Chance (Part 2)

A continuation of the discussion as to whether or not kinship carers (otherwise known as connected persons) are afforded proper access to justice in public law proceedings.



Part 1 of this article focused on the scenario faced by many kinship carers who wish to challenge negative assessments in care proceedings. This part of the discussion can be

found on the Northampton Chambers website ([www.northampton-chambers.co.uk](http://www.northampton-chambers.co.uk)). That part of the article concluded that these prospective carers are often faced with the daunting task of challenging the conclusions of a negative assessment without legal assistance, as a litigant in person, or having to privately fund legal advice and legal representation. Such a situation, more often than not, results in these individuals withdrawing from the process. I then posed questions as to the impact this situation has on the rights of the child and these prospective carers, which I seek to explore within this part of the article.

There are two sets of rights that are impacted upon by the scenario set out above; the individual's right to a private and family life and also the kinship carer's right to access to justice. First, it is well established that an individual living within England and Wales is entitled to a family life as enshrined within Article 8 of the European Convention on Human Rights. This includes their right to be raised within their natural family. Secondly, the right of effective access to court has been recognized

as a fundamental human right by the common law, the European Convention on Human Rights and other global human rights treaties to which England and Wales are parties. Access to legal advice is implicit in the right of access to justice.

In public law proceedings the IVA, which is generally determinative of the kinship carer's involvement, is usually undertaken by a social worker in the employ of the relevant local authority and not by an independent social worker. This assessment cannot be described as thorough and, if negative, can rule a potential carer out of proceedings unless its conclusion is challenged. This represents an interference with the right to a family life of the child and the kinship carer. Some might argue that such interference is necessary on the basis of the local authority's assessment determining that concerns for the child's safety and future wellbeing justify the ruling out of the prospective kinship carer. It is also likely to be argued that this interference is proportionate, given that there has been an assessment undertaken and the prospective carer has the opportunity to challenge that evidence in the course of proceedings. However, these individuals are only generally entitled to public funding for advice and representation if the IVA is positive. The local authority's decision thus rules them out of being a carer and ultimately determines their ability to ably challenge their decision.

In my opinion, this represents an unfair interference with their right to access to justice and accordingly their right to a family life as well as that of the child. What strikes me as being unjust is the fact that such a determinative decision is left to the mercy of the local authority, whose plan is often one of removal, and following what can sometimes only be described as a cursory assessment. Why not remove this decision from the hands of the local authority and allow a more detailed assessment to be undertaken by an Independent Social Worker (ISW)?

Whilst the argument against such a solution will be one of funding, it should be remembered that a number of ISW's work at rates of pay determined by the government. Further, the local authority social workers, many of whom are agency employed, will save the time that they would have to spend conducting these IVA's. I believe that such a solution would strike the right balance between protecting the rights of the child and kinship carers and the preservation of governmental funds.

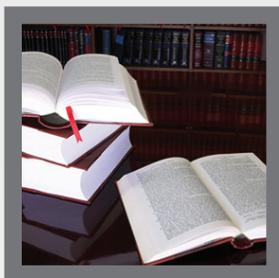
The members at Northampton Chambers are keen to hear other peoples' views on this subject and would welcome any contact in this regard.

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