

# A FIGHTING CHANCE (PART 1)

**Are prospective kinship carers (also known as 'connected persons') afforded proper access to justice in public law proceedings?**

It is trite law that in public law cases, the relevant local authority is under a duty first to assess whether or not it is in each child's best interests to remain within their natural family. If that is not achievable, the authority is obliged to look at kinship carers and then, only as the third and final option, to consider adoption or placement in long-term foster care. Practice Direction 12A - the Public Law Proceedings Guide to Case Management: April 2010, makes clear that the identification of kinship carers (usually the natural parent's extended family and friends) is one of the directions to be "considered" at the First Appointment which, should be held within 6 days of the issue of proceedings.

Once identified, these individuals undergo an initial viability assessment. If this assessment is positive, a more thorough and detailed 'Connected Persons Assessment' is conducted. The local authority is generally responsible for the completion of both assessments. If these are positive and the local authority's plan then becomes one of placement of the children within their care, they are provided with financial and practical support and limited legal assistance.

The situation is very different if one of these assessments is negative and the local authority discounts these individuals as potential long-term carers. The kinship carers are then left with two options. First, a natural parent that is a party to proceedings can seek to challenge the assessments on their behalf and/or can make a Part 25 application for an independent social worker to conduct a further assessment of their ability to care. As natural parents are generally entitled to legal aid, the costs of this assessment can generally be born upon their legal aid certificate.

Secondly, and if a natural parent does not support a child's placement with them, they are faced with the prospect of challenging these assessments in court and/or sourcing an independent social worker assessment in their own right. As they are not the natural parents or carers of the children, they are not generally entitled to any legal aid whatsoever. Inevitably, this can only result in a bill for legal and/or assessment fees reaching into the thousands of pounds. If this is not an option that they can afford, then the prospective kinship carers face the daunting prospect of having to challenge the assessment and enter the legal arena as a litigant in person. The result of this can only be that, in such circumstances, kinship carers are likely to be reluctant to put themselves in the position of having to challenge the local authority's evidence against them. This could potentially result in a child missing out on the opportunity to be raised within its extended family and enjoy the social and developmental benefits associated therewith.

What impact does this have on a child's rights as enshrined within the Human Rights Act 1998? Are they being given a proper opportunity to be raised by a member of their extended family? What impact too does it have on the prospective carer's rights to a family life? Are their rights to access to justice being appropriately protected?

These questions will be explored in greater detail in Part 2 of this article. If anyone, both practitioners and lay readers, have been affected by or had experience of such cases, Northampton Chambers would be keen to hear from you.

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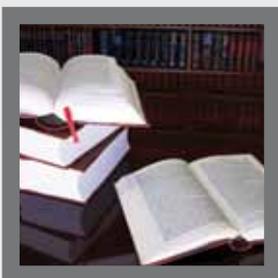


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