**FUNDING LEGAL ADVICE (OTHER THAN SGO)**

There are often instances within the pre-proceedings process or in care proceedings when a kinship carer or potential kinship carer of a child or children ought to have independent legal advice. This raises a number of issues:

1. Should the local authority offer to fund independent legal advice?

2. At what stage should it be offered?

3. How should it be offered?

4. What should the cost limitation be?

**1. Should the local authority be prepared offer to fund independent legal advice?**

* If no other funding is available, e.g. the potential kinship carer may be eligible for legal aid under the Legal Help scheme.
* If local authority has positively assessed the potential kinship carer and supports the placement; and
* If there are potentially different options under which the potential kinship carer might wish to care for the child, whatever the local authority’s preferred plan might be;

**2. At what stage should it be offered?**

As soon as possible after a decision has been made to place the child with the potential kinship carer. This is likely to be late in the pre-proceedings process or the care proceedings, so has the potential to cause further delay.

**3. How should it be offered?**

The potential kinship carer should be invited to seek independent legal advice whether or not s/he has raised this him/herself. Potentially this should be done by legal.

The potential kinship carer should be given the list of local children panel solicitors, which should accompany a standard covering letter explaining:

* The choice of solicitor is up to him/her;
* It is recommended that s/he uses a children panel solicitor because they will have particular expertise in providing relevant advice on the options available;
* How much the local authority will fund and confirming the costs will be limited to that sum, whichever solicitor s/he chooses. It is up to him/her if s/he wishes to pay more;
* Who the solicitor at NSC with conduct of the case is and that the solicitor s/he instructs will need to make contact in advance of the provision of the legal advice to confirm the cost limitation is agreed.

When the solicitor acting for the potential kinship carer makes contact, the costs limitation must be agreed in writing/by email and recorded on the file.

**4. What should the cost limitation be?**

Legal aid rates are traditionally used as a basis of any agreement to fund independent legal advice. This seems unnecessary and potentially confusing. However, current rate of approximately £52/hour provides a benchmark of for what children panel solicitors will accept.

A flat fee of £125 plus VAT should be sufficient depending on the complexity of the case to meet with the potential kinship carer, advise him/her on the different options and confirm the advice in writing, as they are obliged to do under SRA requirements.

Of course this may be subject to negotiation if the solicitor representing the potential kinship carer makes a good argument for further funding. Again, if more is agreed it should be capped and agreed in advance in writing/by email.