Cafcass response to the Law Commission's Kinship Care consultation
Introduction

1. Cafcass (the Children and Family Court Advisory and Support Service) is a non-departmental public body sponsored by the Ministry of Justice. Cafcass independently advises the family courts in England about what is safe for children and in their best interests. **Cafcass works with approximately 133,000 children every year** whose arrangements with their families are decided by the family court, and provides a service that prioritises their safety, understands their experiences, listens to their voices and their needs, and takes into full account their families who are connected to them. Cafcass is the largest employer of child and family social workers as Family Court Advisers and Children's Guardians in England.

2. Cafcass welcomes the opportunity to respond to the Law Commission's consultation on reforms to the law governing kinship care in England and Wales. Our response is focused on the five key proposals put forward by the consultation.

3. Kinship care can offer stability, continuity and permanence within families for many children who cannot safely remain in their parent's care. **Cafcass data for 2025/26 shows that 4,076 children subject to final care plans were living in kinship arrangements, representing 22.6% of all final care plans**. Cafcass strongly supports arrangements that enable children to remain safely within their wider family network where this promotes their welfare and best interests. However, the success of kinship care depends not simply upon identifying a family arrangement, but upon sustaining that arrangement over time through appropriate support, safeguarding and permanence planning.

4. Cafcass welcomes the recently updated Department for Education Kinship care statutory guidance for local authorities published in October 2026 and the introduction of the National Kinship Standards. We support the emphasis on needs-led, whole-family support, children's participation in decision-making, and effective multi-agency working. We particularly welcome the recognition that children should not need to become looked after, or be subject to a particular legal order, solely to access support, alongside the guidance's emphasis on family network and early intervention to help sustain kinship arrangements over time. The standards provide a framework for greater consistency in local authority practice and support for kinship families. Given the relevance of these principles to the issues being considered in this consultation, the Law Commission may wish to consider the guidance and standards alongside its proposals for reform of the legal framework for kinship care.

Statutory definition of Kinship Care

5. **Cafcass supports the proposal to adopt the statutory definition of kinship care**. A single statutory definition should improve consistency across agencies, strengthen recognition of kinship carers and support access to services for children living in kinship arrangements. Further clarity is required about the definition of a "connected person", the distinction between kinship care and private fostering arrangements, and the safeguarding implications where these frameworks overlap otherwise there is still a risk of inconsistent application across local authorities and courts.

Creation of a new Kinship Care Order (KCO)

6. Cafcass recognises the intention behind the proposed Kinship Care Order (KCO), particularly the aim of improving recognition of kinship care. However, **we are not persuaded that the proposal achieves the Law Commission's stated objectives of simplification, coherence and transparency**. The proposed flexibility of the KCO, including the ability to tailor parental responsibility arrangements, review mechanisms and

duration, may enable orders to be adapted to a child's circumstances. However, Cafcass is concerned that this flexibility could also reduce clarity for children, carers and professionals and make arrangements more difficult to understand and navigate in practice. By contrast, Special Guardianship Orders (SGOs) and Child Arrangements Orders (CAOs) are well established, understood by practitioners and supported by an established legal framework.

7. Cafcass is also concerned that **flexibility around duration and review may reduce the sense of permanence that would benefit children and carers.** Children benefit from certainty about where they live, who cares for them and who exercises parental responsibility on their behalf. We would encourage careful consideration of whether the proposed framework sufficiently promotes permanence and stability as central objectives for children in kinship care.

8. Cafcass does **not agree with the introduction of interim KCOs**. Relying on interim orders risks creating premature recommendations before a full assessment and comprehensive analysis has been completed to determine what is in the child's best interests.

9. While the consultation suggests that local authorities prepare reports for KCO applications made within care proceedings, it also suggests that Cafcass or Cafcass Cymru could prepare them for shorter-term private law applications made by consent with no prior local authority involvement. However, **Cafcass maintains that the primary assessment of kinship care placements should remain with local authorities**, as robust independent scrutiny and safeguarding assessments are essential to permanence decisions. Assessment of family functioning, support networks, safeguarding factors and long-term permanence planning should remain principally a local authority responsibility.

10. Cafcass is concerned that **the proposals do not provide sufficient clarity about the circumstances in which Kinship Care Orders would be used within public or private law proceedings.** In practice, there is already evidence of increased reliance on private law routes to secure kinship arrangements. Any reform that further encourages this shift risks reducing the safeguards available to children and families in cases where concerns may previously have warranted a public law response.

11. Where significant decisions are being made about a child's care, living arrangements or the exercise of parental responsibility, public law proceedings provide important safeguards, including independent representation for the child through a Children's Guardian, greater access to legal representation for parents and more intensive judicial scrutiny. **Cafcass would be concerned if substantially similar outcomes could be achieved through a framework that provides a lower level of assessment, representation or oversight.**

12. We are particularly concerned that the proposals could inadvertently create a route through which significant changes to parental responsibility and children's living arrangements are progressed without the level of independent scrutiny traditionally associated with decisions of this nature. This has the **potential to blur established distinctions between public and private law pathways and weaken safeguards for children and birth families.**

13. More broadly, Cafcass is concerned about the potential impact of the proposals on the balance between public and private law pathways. As kinship arrangements are increasingly supported through private law orders, it is essential that children do not lose access to safeguarding oversight, independent representation or support services because of the legal route through which an arrangement is secured. While Special Guardianship Orders made within private law proceedings may be appropriate and

proportionate in many cases, Cafcass has observed situations where the complexity of family circumstances, safeguarding concerns and parental difficulties would have benefitted from a greater degree of assessment, planning and ongoing oversight.

14. The primary challenges faced by kinship families relate to the support available to them rather than the availability of legal orders. Successful kinship arrangements depend not simply on identifying a suitable family placement but on sustaining that placement through practical, emotional, therapeutic and financial support. **Strengthening that support would have a greater impact on children's outcomes than the creation of a new legal order.**

15. Cafcass also considers that many challenges associated with kinship care arise before a final order is made. Earlier identification, assessment and support of family networks may improve opportunities for children to remain safely within their wider family and increase the likelihood of sustainable kinship arrangements.

Automatic Child in Need Status

16. **Cafcass does not support the proposal that all children living in kinship care arrangements should automatically become children in need.** While we recognise the intention to improve visibility and access to support, kinship status alone does not establish that a child meets the statutory definition of a child in need. Under section 17 of the Children Act 1989, a child in need is a child who is unlikely to achieve or maintain a reasonable standard of health or development without local authority services, whose health or development is likely to be significantly impaired without them, or who is disabled. Many children living in stable kinship arrangements do not require statutory intervention from a local authority and increasing the number of children considered to be in need would make it more difficult to identify and provide local authority services to those children who need them. Automatic designation risks conflating a child's living arrangements with an assessment of need and may result in unnecessary intervention in otherwise stable family arrangements. It is not a proportionate mechanism for ensuring that kinship carers and children in kinship arrangements receive access to support.

17. **Cafcass is concerned that the distinction between children who require support and those at risk of significant harm remains visible in practice.** Extending child in need status to all children in kinship care risks obscuring those children who are most vulnerable and most in need of statutory intervention.

Kinship Parental Responsibility Agreements

18. Cafcass sees potential value in the proposal to introduce Kinship Parental Responsibility Agreements (KPRAs) as a practical mechanism for supporting informal kinship arrangements. The proposal could provide greater legal certainty for children and carers, support family-led care and reduce the need for court proceedings where carers need authority to make routine decisions on a child's behalf. While parents can already delegate aspects of parental responsibility, KPRAs would create a more secure and enduring arrangement, providing clarity for carers who have taken on significant responsibility for a child's day-to-day care.

19. While still supporting the KPRAs, **Cafcass is concerned that there is no mechanism for safeguarding arrangements or oversight**. The consultation does not explain how concerns about the suitability of an arrangement would be addressed, nor how disputes about variation or discharge would be managed. Further consideration should also be given to any implications for the family justice system and to ensuring that responsibilities between courts, local authorities and Cafcass remain clear.

Reform of Special Guardianship Orders and Child Arrangement Orders

20. Cafcass is **broadly supportive of strengthening the existing framework of Special Guardianship Orders (SGOs) and Child Arrangements Orders (CAOs)** as an alternative to the creation of a new legal order. We are not persuaded that the primary challenges experienced by kinship families arise from the existence of separate orders. In our view, the more significant issues are inconsistent support, variable access to services and the challenge of sustaining arrangements over time. Reforming existing orders may therefore provide a more proportionate route to achieving many of the consultation's objectives while maintaining legal clarity and avoiding unnecessary complexity.

21. We welcome the consultation's **focus on strengthening support for kinship carers as part of the reforms of SGOs and CAOs**. The success of kinship care depends not simply on securing a legal order, but on sustaining family arrangements over time. Kinship carers often support children who have experienced trauma, family breakdown, neglect or conflict whilst managing complex family relationships and contact arrangements. Long-term practical, emotional and therapeutic support should therefore be recognised as a core component of permanence planning.

22. Cafcass **supports consideration of how reunification may be promoted where it is safe and in a child's best interests**. Cafcass has separately made representations to the Department for Education on the proposed revisions of *Working Together to Safeguard Children (2026)* regarding the need for stronger expectations around reunification decisions and supervision planning. We consider the same principles relevant to the Law Commission's proposals for kinship care. Where a child remains at home, returns home, or is cared for within the wider family network following concerns that previously met the threshold for statutory intervention, decision-making should be supported by clear evidence of how risks have changed and how the child's safety will be protected, monitored and reviewed. The central question must be: *what has changed for this child?*

23. As the Law Commission considers reforms to strengthen the legal recognition and support for kinship care arrangements, Cafcass would expect the legal and policy framework to reflect these safeguarding requirements. Decisions which enable children to remain within, or return to, their family network should be underpinned by a clear evidential rationale, robust planning, appropriate multi-agency oversight and explicit contingency arrangements should concerns re-emerge.

24. This is particularly important where arrangements involve children who may be less able to communicate harm or risk, including non-mobile or pre-verbal children and those with additional needs. The level of scrutiny applied to these decisions should be proportionate to the seriousness of the concerns that originally necessitated statutory intervention.

25. The proposals for interim SGOs, changes to access to CAOs and review mechanisms for SGOs require careful consideration. **Cafcass is not persuaded that a sufficiently clear gap in the existing framework has been demonstrated to justify interim SGOs**, given the range of orders already available to support placements whilst assessments are completed. Similarly, any reforms to improve access to CAOs should retain appropriate safeguards and ensure courts continue to receive sufficient evidence about a child's welfare, family circumstances and support needs.

Voice of the child

26. **Cafcass considers that the role of children's participation within kinship care decision-making could be strengthened**. Children's Guardians and Family Court Advisers routinely gather evidence about children's experiences of domestic abuse, neglect, conflict, exploitation and family functioning. This evidence often provides important insight into whether a proposed kinship arrangement can meet a child's long-term needs and promote their welfare. Stronger recognition within the legal framework is needed that decisions about kinship care should be informed by children's lived experiences, relationships, identity and understanding of their family circumstances. Children should be supported to understand decisions affecting them, express their views and understand how those views have informed decisions made by professionals and the court.

27. Cafcass practitioners are required to undertake direct work with children wherever possible, including writing introductory letters, helping children understand proceedings affecting their lives, eliciting and analysing their wishes and feelings, and explaining recommendations made on their behalf. Cafcass reporting templates have been updated to ensure that children's responses to recommendations are available to the court. The reformed legal framework should reflect a similar expectation across kinship care arrangements. While there will be different considerations in public and private law proceedings, children should, wherever possible, be supported to understand the decisions being made about them, how their views have been considered, and where those views have influenced assessments, recommendations and outcomes.

28. In particular, the framework should recognise that children living with domestic abuse are victims in their own right. Through both public and private law proceedings, Cafcass practitioners hear directly from children about the impact of coercive control, controlling behaviour and post-separation abuse. These experiences often continue to affect children's wellbeing even when alternative care arrangements are being considered and should therefore be explicitly recognised and carefully considered when assessing the suitability, safety and sustainability of kinship care arrangements.

Resource and capacity implications

29. Cafcass considers that the resource implications of the proposals require fuller assessment. Several proposals could increase demand on Cafcass through requests for assessment, reporting, dispute resolution and court involvement in private law kinship arrangements. Should Kinship Care Orders become a commonly used route for securing family placements, the volume and complexity of applications requiring Cafcass involvement may increase significantly. Any future proposals should therefore be accompanied by detailed modelling and impact assessment of anticipated demand across Cafcass, local authorities, HMCTS and the wider family justice system, together with assessment of workforce, funding and implementation requirements.

If there are any questions about the points raised in this consultation, please contact policyteam@cafcass.gov.uk