BASW England and BASW Cymru response to the Law Commissions Consultation on Kinship Care - October 2026.

Individual questions were not responded to, instead the following submission is intended to address the key areas which BASW members wished to prioritise in our response.

BASW welcomes the ambition to improve clarity, stability and recognition for kinship families across England and Wales. However, there are specific aspects of the proposals where we still wish to raise some points of concern.

Our main concern is that introducing a flexible order with customisable or "enhanced" Parental Responsibility (PR) creates a concerning legal ambiguity. In practice under Special Guardianship Orders (SGOs) families and practitioners already struggle to navigate PR boundaries. Without statutory clarity on core decisions like schooling, medical consent and relocation an open-ended order will increase practitioner burden and spark avoidable friction as children's needs evolve. Furthermore, any information given to carers must remain strictly neutral and evidence-informed presenting the true legal and financial reality of each pathway rather than steering kinship families toward specific options to suit local authority budgets or court capacity.

We caution against compressing or overly altering the legal tools available. Replacing SGOs and Child Arrangements Orders for kinship carers risks removing nuanced options tailored to different family circumstances, and the foundational presumption of permanence in SGOs must not be diluted. In particular, we strongly oppose proposals for time-limited KCOs that would be subject to automatic review or expiration. While we welcome the growing focus on reunification, and recognise its profound importance within kinship arrangements, reunification should be enabled through improved, well-resourced social work practice and relational support planning rather than a time-limited legal order. Imposing a fixed expiration or review date on an order undermines a child's sense of permanence and risks pushing families back into an adversarial family justice system without access to legal aid, potentially fracturing delicate family relationships that need to endure long after court and social work involvement end. Crucially, the choice and duration of any legal status must be driven strictly by the assessed long-term needs of the child and not adult preference or administrative mechanisms.

This brings us to an operational boundary: guarding against a system-wide rush to avoid care status. We should avoid a culture where the potential introduction of KCOs encourages a culture where local authorities bypass Care Orders or Section 20 accommodation prematurely to keep numbers down. Where a child needs protection, independent oversight through IROs and structured support of Looked After status must be maintained for as long as necessary to complete robust assessments and provide the right support to each child. Similarly, any future variation or discharge of a KCO that results in a change of residence or return to parental care must have formal court scrutiny supported by an independent Cafcass or social work report.

It is insufficient for an order merely to reference support in principle; support needs must be fully assessed prior to the order being made and secured through a binding Kinship Care Support Plan. A child's developmental needs do not vanish when their legal status changes. Support plans must account for long-term financial needs as the child grows. Clear access

pathways are especially vital for minoritised families. Those families face well-documented barriers and disproportionate representation in informal arrangements. In England, kinship families should have non-stigmatising access to Family Help or automatic Child in Need recognition under Section 17. In Wales support must align seamlessly with the assessment framework of the Social Services and Well-being (Wales) Act 2014 without threshold gatekeeping.

Throughout all of this the voice of the child must remain central. Accessible mechanisms must allow children to share their views as their circumstances change over time. Contact expectations with parents should be clearly defined at the start to prevent conflict. Any statutory presumption of involvement must remain strictly rebuttable and subordinate to the child's safety and welfare.

Finally legislative change alone will not fix these systems without funding and workforce capacity. Many current problems stem from excessive caseloads, delayed assessments and court backlogs. A distinct approach is also required in Wales. Tailored assessment models like Form K Wales already exist within the fostering framework. Ultimately supporting kinship families relies on properly resourced local authorities and courts. Comprehensive multi-agency training is also essential, rather than simply redrafting statute.