

The Rt Hon Shabana Mahmood MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London SW1H 9AJ

January 2025

Dear Secretary of State for Justice,

Every year, thousands of children are deprived of their liberty by the Family Court.

Depriving a child of their liberty involves the state restricting the child's freedom in some way. It often means a child is confined in a particular place. Or that their movements are constrained and supervised in ways which are different to how you would expect a parent to care for a child of that age. It engages the child's right to liberty under Article 5 of the European Convention of Human Rights. It can have a significant impact on their mental and physical wellbeing and lead to them being isolated and subject to high levels of restraint.

It can also be difficult to identify and secure an appropriate home for the child. Too often this results in children living in settings which do not meet their needs and are far away from their families and communities. Far from familiar people who might be able to offer them support, and comfort during what is likely to be the scariest of times.

Between October 2023 and September 2024, 1464 children were involved in applications to deprive them of their liberty. This figure includes children involved in both applications for secure accommodations orders, and orders made by the High Court using powers known as the inherent jurisdiction. Both orders can result in draconian measures for the child. Yet too often parents and carers have no access to information and legal advice when their child is, or may be, deprived of their liberty. Where court applications are made, many are unrepresented, left to navigate confusing and distressing proceedings alone. Nuffield Family Justice Observatory found that 88.5% of parents and carers were not legally represented at any hearings in applications made under the High Court's inherent jurisdiction. Ministry of Justice data shows a very low level of legal representation in secure accommodation order cases too.

Family Rights Group has analysed the legal aid regime in these situations and found it riddled with anomalies and injustices. For example, a parent whose child is subject to care proceedings is entitled to legal aid to fund representation in those proceedings. This is not means tested and only a low merits test applies. It reflects an acknowledgement that families must be legally represented when the state is considering removing their child. The same cannot be said in relation to deprivation of liberty proceedings. Instead, the financial situation of parents and carers, and a more stringent merits test, will determine whether they receive legal aid.

The impact of all this on children and families is significant. Whether, where and how a child will be deprived of their liberty are questions without straightforward answers. The relevant law is complex and the potential consequences for the child and their family significant. Access to legal advice and representation before and during any court proceedings is vital for;

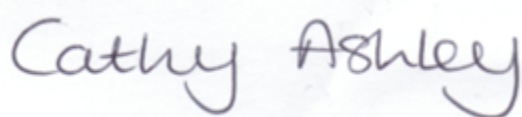
- Families to understand what is happening and what their options are
- Families and children to be involved in planning for the child
- Ensuring fair process for the child and family is followed, both in and outside of court.

Family Rights Group have put [forward clear proposals](#) in a briefing note for legal aid reform in deprivation of liberty cases. These include aligning the level of legal aid available with that available to parents and children in care proceedings. This would mirror [the changes](#) the Ministry made to legal aid for parents (and other persons with parental responsibility) in adoption and placement order proceedings in 2023. The proposals also include improving access to early advice for parents and children, when deprivation of liberty proceedings are contemplated. They will help families understand what applications may be made and the processes involved. The proposals are [annexed](#) to this letter for ease of reference.

The need for legal aid reform is brought into sharper focus with the Government's proposed changes to section 25 of the Children Act 1989. These are set out in Clause 10 of the [Children's Wellbeing and Schools bill](#). Under the proposed changes, a children's services department will still be able to apply for a secure accommodation order and make arrangements for a child to be deprived of their liberty in a secure children's home. But they will now also be able to apply for an order to deprive a child of their liberty in "relevant accommodation". A broad definition is given for what "relevant accommodation" means. This is a significant and substantial change to the legislative landscape governing how the child welfare and family justice systems respond to older children facing difficulty. It adds further to its complexity. The legal aid regime that will apply to this new form of arrangement is not yet confirmed.

We are clear however that the legal aid regime we propose for secure accommodation orders and orders made under the High Court's inherent jurisdiction should similarly put in place for children who are placed in the new 'relevant accommodation' arrangements. However a child is deprived of their liberty, the legal aid regime must be fair and appropriate and support access to justice. We are calling on Government to urgently address these injustices. With such high numbers of children being deprived of their liberty by the Family Court, there is no time for delay.

Sincerely,



Cathy Ashley, Chief Executive at Family Rights Group

Annex A: Our proposals for legal aid reform for children and families where a deprivation of liberty order (under whichever route) is contemplated or applied for.

8.1 Legal aid reform: early advice when proceedings are contemplated

Children and families who are on the edge of possible proceedings that may result in the deprivation of a child's liberty should have access to a form of family help which is similar to that which is available to parents (and anyone with parental responsibility) during the formal pre-proceedings process (that is 'family help (lower) (level 2) - public law').¹

This proposed form of 'family help', would be:

- Non means tested
- Have the same merits test as applies to family help (lower 2) - public law. This is often referred to as the 'reasonable private paying individual test'²
- Remunerated at the same fee as family help (lower) (level 2) - public law (currently £365).
- **Further:** A specific criterion could be attached to the provision for this family help (as is the case in the formal pre-proceedings process).³ This would be that the person seeking advice must provide confirmation in a prescribed form that children's services are contemplating (or have contemplated) applying to deprive the child of their liberty under either a secure accommodation order or an order under the inherent jurisdiction of the High Court. This could be in the form of:
 - A letter or email from a children's services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that children's services are contemplating (or have contemplated) applying to such an order; this must be from a children's services (or equivalent) address or email address, or
 - A copy of the child protection plan or notes from a looked after child review or other children's services decision-making meeting stating that there was such a plan in place.

This level of legal aid should be available for:

- The child who may be the subject of the application for a secure accommodation order or order to deprive them of their liberty under the inherent jurisdiction
- Their parents; and anyone else with parental responsibility for the child.

For parents, and anyone with parental responsibility, it would allow them to access free, independent advice about what could happen to, and for, their child. And what options might be available to keep their child safe. Examples of questions they may need early-stage advice about include:

- How can my child be kept safe?
- If an order is made to deprive my child of their liberty, where will my child live?
- What checks or reviews will be carried out in respect of restraints used and the impact they have on my child's wellbeing?
- If an order is made to deprive my child of their liberty, when will I be able to see them and speak with them?
- What is the difference between a secure accommodation order and an order made under the High Court's inherent jurisdiction?

¹ Pre-proceedings is the formal process where children's services consider whether they need to apply to Family Court to commence care proceedings. Once the parents or anyone with parental responsibility have received a letter confirming the process has started, they are eligible for a type of legal aid called family help (lower) (level 2). This type of legal aid offers limited payment for solicitors, who, in nearly all cases receive a fixed fee of £365 for their time

² This test is that the potential benefit to be gained from the provision of civil legal aid justifies the likely costs, such that a reasonable private paying individual would be prepared to start or continue the proceedings having regard to the prospects of success and all the other circumstances of the case. See [regulation 7 of The Civil Legal Aid \(Merits Criteria\) Regulations 2013](#)

³ Applicants for family help (lower) (level 2) – public law legal aid in relation to the formal pre-proceedings process need to a) be the child's parent or other person with parental responsibility and b) need to have received a letter formally notifying them of the start of the pre proceedings process

8.2 Legal aid reform: where an application has been made

Changes should be made to legal aid provision in applications for secure accommodation orders and orders to deprive a child of their liberty under the High Court's inherent jurisdiction **to bring it in line with what is available in care proceedings. The specific changes needed are as follows:**

Applications for secure accommodation orders:

- Parents and anyone with parental responsibility to receive non means tested legal aid
- The merits test for parents and anyone with parental responsibility should be lowered so that it is in line with the merits test in care proceedings⁴
- There are no changes needed to the provision of legal aid for the children subject to applications for secure accommodation orders. Children receive non means tested legal aid and only a low merits test applies.

Applications to deprive children of their liberty under the inherent jurisdiction:

- Parents and anyone with parental responsibility to receive non means tested legal aid
- The merits test for parents, anyone with parental responsibility and the child should be lowered so that it is in line with the merits test in care proceedings
- We support calls for children to be joined automatically as parties to proceedings where they are the subject of an application to deprive them of their liberty under the High Court's inherent jurisdiction.

⁴ The merits test found in regulation 65 of the [Civil Legal Aid \(Merits Criteria\) Regulations 2013](#)

8.3 Legal aid reform: the proposed changes to section 25 of the Children Act 1989

Clause 10 of the [Children's Wellbeing and Schools Bill](#) proposes changes to section 25 of the Children Act 1989. This will allow children's services departments to deprive a child of their liberty in "relevant accommodation" rather than in a secure children's home. This is described as accommodation provided for the purposes of care and treatment of children but that is also deemed capable of being used to deprive a child of their liberty. Government needs to make clear provision for legal aid for both children and families in this situation.

Legal aid provision should be available as follows:

Where an application to deprive a child of their liberty in "relevant accommodation" is contemplated:

- Children and families who are on the edge of possible proceedings that may result in an order to deprive a child of their liberty in relevant accommodation should have access to a family help similar to that which is available to parents (and anyone with parental responsibility) during the formal pre-proceedings process (that is 'family help (lower) (level 2) - public law').⁵ This family help would be available to parents, those with parental responsibility and the child who would be the subject of the application.
- This mirrors our proposal for legal aid where an application is for a secure accommodation order or an order to deprive a child of their liberty under the High Court's inherent jurisdiction is contemplated. The family help would be remunerated at the same rate. For more information, please see [table 8.1](#) which sets out the proposal in full.

Where an application to deprive a child of their liberty in "relevant accommodation" is made:

- Legal aid to be available to parents and those with parental responsibility in line with what is available in care proceedings:
 - i) Parents and anyone with parental responsibility to receive non means tested legal aid
 - ii) The merits test for parents and anyone with parental responsibility should be lowered so that it is in line with the merits test in care proceedings.⁶
- Legal aid to be available to children in the same as it is where a secure accommodation order application is made. That is, children should receive non means tested legal aid and only a low merits test applies. Please see [table 8.2](#) for more information about the proposals in relation to secure accommodation order applications.

⁵ Pre-proceedings is the formal process where children's services consider whether they need to apply to Family Court to commence care proceedings. Once the parents or anyone with parental responsibility have received a letter confirming the process has started, they are eligible for a type of legal aid called family help (lower) (level 2). This type of legal aid offers limited payment for solicitors, who, in nearly all cases receive a fixed fee of £365 for their time

⁶ The merits test found in regulation 65 of the [Civil Legal Aid \(Merits Criteria\) Regulations 2013](#)