

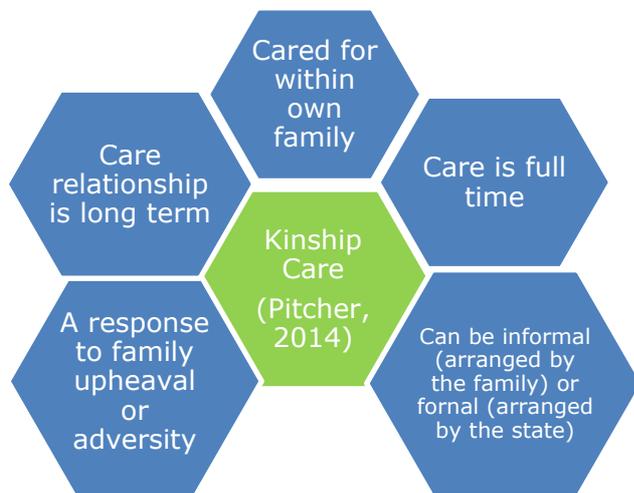
Spotlight on Kinship care

March 2020

“ Scotland must hold the hands of those who hold the hand of the child. ”
The Promise, Independent Care Review, 2020, pg. 20

Introduction

Across Scotland there are many children who may live with family and friends at some point during their childhoods. This may be due to parental imprisonment, parental drug and alcohol problems, parental mental health issues, bereavement, parental illness, parental absence, as well as neglect and abuse. During these times, grandparents, aunts, uncles, older siblings and others can provide the love, nurture and stability that children need. This may be for a short period of time, though for some families, it may become a longer arrangement if the child cannot return to the care of their parent.



Wherever possible children should have the opportunity to grow up where they feel they belong, where they are safe and secure, and where they have dependable, enduring relationships with the adults who care for them. Such circumstances allow children to develop healthy attachments where they have the best chance to be confident, resilient, healthy and happy individuals.

Generally there are five characteristics of kinship care:

- the child is cared for within his or her own family (or friends) network
- care is full-time
- the care relationship is long-term
- it is a response to family adversity or upheaval
- it can be 'formal' (arranged by the state or its representative) or 'informal' (arranged by the family) (Pitcher, 2014).

International evidence

Globally, kinship care is the most common form of alternative care for children not currently living with parents (EveryChild and Help Age International, 2012). There has been an increasing use of formal kinship care by government agencies in different countries, including the UK and Ireland (Aldgate, 2009; Hill, Gilligan & Connelly, 2019; McCartan et al., 2018; Munro & Gilligan, 2013), New Zealand and Australia (Connolly, Kiraly, McCrae, & Mitchell, 2017), and the USA (Ching-Hsuan, 2018). Explanations for the growing use of formal kinship care placements include the general preference for family-based care in social work practice, and the requirement in certain jurisdictions to consider relative placement before non-relative foster care or residential care, often with statutory protection (Brown & Sen, 2014).

“ It would seem that kinship care tends to blossom in certain political conditions, specifically those where there is not a state or family monopoly of care, and where the legislative framework is in place for the state and the family to work in partnership. ”

Broad, 2004, p. 215

The main advantages of kinship care relate to emotional permanence where children maintain family ties, have a stronger sense of identity, achieve stability, and have an increased possibility of the child remaining in the same school and community (see Broad 2001, Burgess et al, 2010 & Dill, 2010). In a study for the Joseph Rowntree Foundation, Broad et al. (2001) found that young people were overwhelmingly positive about kinship care, feeling loved, settled and safe within a family environment they understood. This could help explain why kinship placements appear to be significantly more stable than foster care. Perry et al. (2012) compared the stability of kinship and foster placements in Ontario, Canada, and found that foster placements were four times more likely to end within the first month. Kinship placements were also more stable in subsequent months. In the Farmer and Moyers' English study (2008) the majority (93%) of the children in kinship placements were set (according to their care plan) to remain in their placement until they reached adulthood. In contrast only 61% of the unrelated foster placements were planned as long-term, while 21% were planned as short-term. Significantly more of the kinship placements were geographically close to the family home, with 65% of kinship placements near the parental home, compared to 46% for foster care (Farmer & Moyers, 2008).

Research has focused primarily on kinship and foster care arrangements in the USA, and the majority of this work has found differences between the two groups, with children in kinship care displaying fewer behavioural problems and better mental health functioning (Zinn, 2012; Winokur et al, 2008). Dill (2010), comparing the two groups in a Canadian context, also found that behavioural, emotional and mental health outcomes were better for children in kinship care. This was mirrored in a recent Scottish study, [Permanently Progressing? Building secure futures for children](#) where lower levels of concerns were reported for the wellbeing of young children living in kinship care, as opposed to foster care (Cushworth, et al., 2019). Across many studies, children in kinship care are reported as feeling less stigma associated with being 'looked after' (evident also in the Scottish study by Burgess, 2010), and experiencing higher levels of well-being (Coram Voice, 2015).

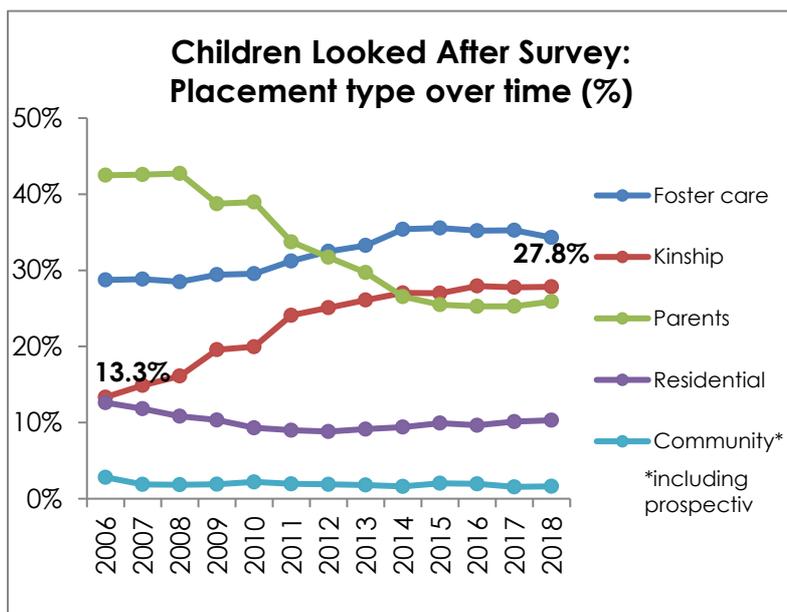
Several authors refer to the relatively high proportion of grandparents providing kinship care; they tend to be older on average than 'traditional' foster carers, in poorer health,

and to be less well supported financially and emotionally (Aldgate, 2009; Aldgate & McIntosh, 2006; Connolly et al., 2017; Farmer, Selwyn, & Meakings, 2013; McCartan et al., 2018; Wijedasa, 2017). There are some concerns that kinship placements may be used too readily and with less rigorous assessment than would be usual when planning foster care placements (Uliando & Mellor, 2012).

Kinship Care in Scotland

Children can live with their kinship carer in an informal (private agreement within families) or formal arrangement (involving local social work departments and the Children’s Hearings System). There has been a steady growth in the use of kinship care as a formal placement choice for children in care in Scotland. ‘Formal’ kinship care placements accounted for less than 10% of all looked after children in the years between 1984 and 1999, followed by a steady rise to 28% in 2018 (Scottish Executive, 2003; Scottish Government, 2019). As of 31 July 2018, there were 14,738 children looked after by Scottish local authorities; of these, 4103 children were in a formal kinship care placement (Scottish Government, 2019).

If the Scottish category of home supervision is removed from these figures (i.e. looked after at home), to leave only children in ‘out of home’ care, these proportions would be higher – approximately 22% in 1984, rising to 38% in 2018. That is over one in three children in Scotland living in ‘out of home’ care who are now living in formal kinship care.



There is significant variation in the use of formal kinship care across Scotland. Glasgow (40%),¹ West Dunbartonshire (40%) and North Lanarkshire (42%) have the highest rates, with two out of five looked after children living in formal kinship care. The Scottish average is 28%; local authorities with a lower proportion of children in formal kinship care include: Moray (17%), Falkirk (13%), and Eileen Siar (12%) (Scottish Government, 2019).

Figure 1: Looked after children in Scotland (Scottish Government, 2019)

Formal kinship care statistics only provide one part of the picture. There are an estimated 12,630 children in kinship care across Scotland according to the 2011 census (Wijedasa, 2017). Research has highlighted that children in kinship care families are disproportionately living in the poorest households across Scotland (Nandy et al., 2011). The majority of these children are in private family arrangements with no or little involvement from social work services.

¹ Please note that this figure is based on 2016-17 CLAS data return from Glasgow City as the recent 2017-18 data is not available.

Legal framework

There are a range of different legal orders where children are cared for by a kinship carer (see Appendix 1). The majority of children in formal kinship care are legally 'looked after' as a voluntary agreement under section 25 of the Children (Scotland) Act 1995 or under a Compulsory Supervision Order under section 83 of the Children's Hearings (Scotland) Act 2011 (reviewed annually). These legal orders do not provide long-term legal security for a child or carer. Despite this, children can remain on these orders in some cases for the duration of their childhood.

Another option that is less frequently used is a Permanence Order under section 80 of the Adoption and Children (Scotland) Act 2007. One of the advantages of a Permanence Order is it can be tailored to best suit the needs of the individual child, with the potential for parental responsibilities and rights to be shared between the kinship carer, parents, and the local authority.

There are some children in informal kinship care who are not looked after but have a court order which provides them with legal security. For these children, orders may have been made by the courts under section 11 of the Children (Scotland) Act 1995, which will set out conditions of residence for the child and may transfer some or all of the parental rights and responsibilities. These types of formal orders are classified as Kinship Care Orders (KCO) for the purpose of the Children and Young People (Scotland) Act 2014, as set out in section 72(1). The 2014 Act introduces a duty on local authorities to provide assistance to people with such a Kinship Care Order or people who are seeking such a Kinship Care Order and to children deemed eligible who are the subject of one of these orders. Scottish Government statistics detailing the use of Kinship Care Orders were published for the first time in 2019. Between 1 August 2017 to 31 July 2018, 113 children ceased to be looked after due to becoming subject to a Kinship Care Order (Scottish Government, 2019). It should be noted that Glasgow City Council's figures are not included in the local authority data return to the Scottish Government, therefore the actual number is likely to be higher.

There is no legal requirement for the state to be notified when a child is being cared for in an informal kinship care arrangement with a close relative (through blood, marriage or civil partnership). This differs for a child who is being cared for by a person who is not a close relative for more than 28 days where the parent and carer have a duty to notify local authorities, as this is a private foster care arrangement (Scottish Government, 2013).

Policy landscape

Over the last ten years there has been a strong policy emphasis promoting kinship care in Scotland following a national consultation on foster care and kinship care, *Getting it Right for Every Child in Kinship and Foster Care* (Scottish Government, 2007). Two key policy imperatives were identified in the report: providing a child-centred approach to kinship and foster care; and supporting high quality kinship and foster care, based on the guiding principle of preferring wider family-based care.

“ Unless there are clear reasons why placement within the family would not be in the child's best interests, care within the wider family and community circle will be the first option for the child . ”

Scottish Government, 2007, p. 3

To progress this ambition, the British Association for Adoption and Fostering (BAAF) and The Fostering Network supported the programme *Moving Forward in Kinship and Foster Care* (2008), with a task group focused on the assessment and training needs of kinship carers. The work included addressing the training needs of kinship carers; developing assessment guidelines for kinship carers of looked after children; and considering existing models of good practice for kinship carers of non-looked after children. The subsequent Looked after Children (Scotland) Regulations 2009 recognised the specific role of kinship care (Part V). These regulations set out the assessment process, placement and provision of allowances for kinship carers, alongside those of foster carers.

The work of grassroots support groups for kinship carers have highlighted the level of unmet need for children and carers in formal and informal kinship care. Critically, these groups have campaigned on the issue of wide local variation in financial allowances paid for children in formal kinship care depending on the local authority in which the child lives (Gillies, 2015).

In response to the recommendations of the National Foster Care Review (2013), the Scottish Government published research on the potential methodologies available for calculating allowances for foster carers (Scottish Government, 2014). Subsequent development was informed by a potential legal challenge, from the Equality and Human Rights Commission (EHRC) against Scottish local authorities, concerning the need for parity in allowance rates for children living in kinship and foster care. Analysis of an EHRC Freedom of Information request of local authorities on foster care and kinship care allowances found considerable disparity in allowance rates across Scotland (Farrugia & Hill, 2014). In 2015 the Scottish Government accepted this child-rights based position, and allocated additional funds to local authorities in order to facilitate an uplift of kinship allowances to the rates provided to foster carers locally.

The 2017/18 Programme for Government contained a commitment to review foster, kinship and adoption allowances, bringing forward proposals for national kinship care and foster care allowances. A national review of care allowances concluded in Summer 2018 with 12 recommendations; Recommendation 3 states: To achieve consistency for children and young people in foster and kinship care, Scottish Government and COSLA should consider a Scottish Recommended Allowance, based on a methodology agreed by the Working Group, in order to meet the list of core components identified by the Group (Scottish Government, 2018). The 2019/20 Programme for Government states the government will continue to work with COSLA on the review group recommendations with a view to implementation from April 2020.

In October 2016, First Minister Nicola Sturgeon announced an Independent 'Root and Branch' Review of the Care System in Scotland at the SNP National Conference. The First Minister stated her commitment for the Review to consider the legislation, culture, practices and ethos of the care system where:

The Independent Care Review involved over 5,500 care experienced children and adults, families, and the paid and unpaid workforce who shared their experiences of care. The Independent Care Review published [The Promise](#) document which outlines what Scotland must do to make sure its most vulnerable children feel love and have the childhood they deserve (Independent Care Review, 2020). The Promise recognises the vital importance of kinship care for children and young people across Scotland.

“ Whatever the mode of arrangement, Scotland must ensure that children living in kinship care get the support they need to thrive. ”

Independent Care Review, 2020, pg.74

The review heard from many kinship families about the lack of support and the fear they sometimes have in asking for help. They argue 'support must be offered freely without kinship carers having to fight for it' (ibid.). The provision of intensive family support must be available for kinship families, as well as birth families. There was widespread political support for the findings of the review and a commitment to '[The Plan](#)' to lead to transformational change of the care system.

Assessment of kinship carers

Becoming a kinship carer is a very different process to that of a foster carer; children may often be cared for by a kinship carer in an emergency scenario (for example, a parent is in hospital). Assessment at this stage by social work agencies may be very basic with the primary aim being that children are in a safe, caring environment with people who are familiar to them.

Kinship carers will be assessed in relation to a specific child or children, unlike a foster carer who is assessed in relation to the developmental needs, age and stage of the child. The process of kinship care approval is much less regulated than it is with foster carers. For instance, agencies are obliged to establish Fostering Panels, whose constitution, membership and function are clearly specified in regulation. The Fostering Panel ensures that the social work assessment is robust, the carer understands the fostering task, and has the potential to meet its demands. Only after the Agency Decision Maker has considered the Panel's recommendations can they approve a carer to offer placements.

In kinship care the entire process can be undertaken by local social work teams. Moreover, while foster carers must be reviewed and 'reapproved' by the Panel at regular intervals, there is no statutory requirement for the review or reapproval of kinship carers (although guidance recommends that local authorities should establish one). Some local authorities do have a process of assessment of kinship carers and also may have kinship care panels. However, often the focus is on whether the kinship carers are eligible for financial allowances; and/or assessment of kinship carers' ability to care for the child.

Care planning for children

As of July 2018, around 10% of children living with a kinship carer do not have a current care plan; this compares to 5% of children looked after 'at home', 1% of children in foster care, and 2% of young people in residential care (Scottish Government, 2019).

Local authorities very often have a different process for reviewing a child's plan and decision-making for children in kinship care, compared to foster care for example. For understandable reasons, children are often placed with kinship carers on an emergency basis and this then becomes the child's *de facto* placement. This may indeed be the best place for the child to live; however, anecdotal evidence suggests that kinship carers are often not fully assessed with a view to caring for the child for the rest of their childhood. Many areas do not routinely scrutinise a child's plan at Looked after Child Reviews (as they would for looked after children living in other placement types) and most do not

have a key decision-making point for deciding that the child will be cared for by the kinship carer as a permanent arrangement.

Provision of support

Information, advice and support on a range of aspects are of critical importance for kinship carers. Such issues include attachment, trauma, resilience, child development, the impact of abuse and neglect on children, and supporting children who are displaying emotional and behavioural difficulties. There is a need for specific advice on legal and financial matters, and accessible information. For many, managing strained and conflictual family relationships and supporting children who are often upset and distressed is demanding, and practical and emotional support are required. A Scottish study exploring permanence for young children in Scotland, found 'the lower levels of support accessed by children in kinship care, and their carers was stark' compared to foster care despite the similarly high levels of need (Cushworth et al., 2019, p.12).

Kinship carers must have opportunities to discuss their situation with someone knowledgeable about kinship care, and to be signposted to national and local support networks. Historically the provision of advocacy services for children and young people in kinship care have been limited (Elsley, 2010).

Under the Children and Young People (Scotland) Act 2014, all children aged two years old who are subject to a Kinship Care Order are eligible to access 600 hours of free early learning and childcare. This is also the case for looked after two year olds, and two year olds subject to a Guardianship Order. Other children are not eligible for these hours until they are aged three, unless their parents are in receipt of certain qualifying benefits. The number of two year old children in kinship care who have received early learning and childcare provision is not currently known.

Provision of financial support

At present the rate of the allowance provided to foster carers and kinship carers is determined by individual local authorities and independent fostering agencies, in line with Regulation 33 (i.e. taking account of the child's needs and the circumstances of the carer) of the Looked after Children (Scotland) Regulations 2009. Scottish Ministers have powers under section 110 of the Adoption and Children (Scotland) Act 2007 to set the level of payments to kinship carers, but have not utilised these powers. There is currently no national statutory guidance on the allowance rate that is to be paid to carers, or thresholds indicating a minimum or maximum payment to meet the costs of caring for a looked after child.

Local authorities can utilise one of three legal powers to make payments to kinship carers: either section 22 of the Children (Scotland) Act 1995, section 50 of the Children Act 1975 or regulation 33 of the Looked After Children (Scotland) Regulations 2009. Which legal basis the local authority uses is important because of the potential interaction with the social security system (for more information, see CPAG (2018) [Kinship care and benefits factsheet](#)). Access to child-related social security benefits such as child benefit is an important point of difference between kinship carers and foster carers. Many local authorities confirmed in their Freedom of Information (FOI) responses that they take child welfare payments into account when determining the level of kinship care allowance (Farrugia & Hill, 2014).

Local authorities indicated a range of positions on the provision of payments for informal kinship care. The use of legislation for payments for informal kinship care was either the

section 50 of the Children Act 1975 or a child 'in need' section 22 of the Children (Scotland) Act 1995.

The deliberations surrounding financial allowances for kinship carers in relation to foster carers and development of a national recommended allowance rate are ongoing. There is an opportunity to explore the extension of devolved powers or use of 'top up' payments for kinship carers. Under section 24 of the Scotland Act 2016, the Scottish Government has the power to make discretionary 'top-up' payments to individuals who are entitled to a reserved benefit which could be applied. However, there needs to be very careful consideration of the interaction with all aspects of the social security system to ensure that there are no negative unintended consequences for kinship carers and the children they care for. One advantage of this approach would be the separation of financial assessment and allowance provision currently undertaken by local authority social workers to a national agency with the required skill set in the benefits system. This may disentangle the financial support to kinship care families from the practical and emotional support that can often be required.

Continuing care and aftercare

Explicit commitment is required regarding the provision of appropriate allowances and support services with respect to young people who remain in their kinship care placement into young adulthood (up to the age of 21), whether they are 'looked after', or continue to live with their kinship carers under the provisions of [Part 11 \(Continuing Care\) of the Children and Young People \(Scotland\) Act 2014](#). Guidance accompanying Part 11 notes that 'eligible' young people must be provided with same accommodation and other assistance as was being provided by the local authority, immediately before the young person ceased to be looked after.

The legal order under which a child is cared for has an impact on access to social work services and eligibility to other services with corporate parenting duties. For example, a child on a Kinship Care Order is not a looked after child and is not eligible for continuing care and aftercare – and this is often overlooked. Families having their own autonomy in looking after a child should be supported; however, sometimes the child and carers' changing needs over time are not considered, and the fact that they may wish and need to access support from social work and other agencies in the years to come. It can also mean that children who would have benefitted from continuing care and aftercare are being denied these services. Having a Permanence Order should make accessing such support easier and also ensures that the child can access continuing care and aftercare in later years. There may be differing levels of understanding of the consequences of the differences between a Kinship Care Order and a Permanence Order across Scotland, and so it is unclear how much of these differences are then communicated to children, kinship carers and parents.

Summary

Kinship care is a crucial part of Scotland's care system. There is international evidence demonstrating the strong value of kinship care for children feeling loved, safe and secure with family. There has been less focus on the care planning for children in formal kinship care and assessment processes. Children and young people, along with their kinship carers, are often very positive about their lived experience of kinship care. There remains challenges in the equitable level of support for kinship families across Scotland. There needs to be greater recognition of the unique value of kinship care and the support services needed to ensure that all children can flourish.

Appendix One

- ***Section 25 of the Children (Scotland) Act 1995***

This is used when the parent/s or anyone else holding parental responsibilities and rights in relation to the child voluntarily agree for the child to be looked after by the local authority. The child can then be placed by the local authority with kinship carers. It does not provide long-term legal stability for the child as this is a voluntary arrangement and therefore obviously the parent/s can seek for the child to be returned to them if they wish.

- ***Compulsory Supervision Order under section 83 of the Children's Hearings (Scotland) Act 2011***

A Children's Hearing can grant a Compulsory Supervision Order ("CSO") in relation to a child's residence, and therefore stipulate that the child must reside with kinship carers. A CSO lasts for one year and can be reviewed within that period.

- ***Permanence Order under section 80 of the Adoption and Children (Scotland) Act 2007***

A Permanence Order ("PO") can be sought by a local authority to secure a child's residence and who holds parental responsibilities and rights for a child. The mandatory provision within a PO stipulates where a child must reside and so can be used to secure a child living with kinship carers. The ancillary provisions generally refer to the distribution of parental responsibilities and rights in relation to the child and any other specific provision that is important for that particular child (for example, in relation to contact arrangements with extended family members). The mandatory provision regarding a child's residence must always vest in the local authority; however the ancillary provisions regarding parental responsibilities and rights can vest in one person/local authority or be shared between people. In this way, a PO can be tailored to best serve the needs of the individual child and their family. For example, all parental responsibilities and rights (excluding residence) may vest in the kinship carer. Or, the responsibility and right regarding contact with the child may remain with the child's parents, or be shared by the parents and the kinship carer. Alternatively, all parental responsibilities and rights could be shared in some way between the kinship carer and the local authority. The child remains "looked after" whilst a Permanence Order is in force.

A PO may also include the "authority to adopt", meaning that the court has decided that it would be suitable for the child to be adopted. Whilst this may not apply to many children in kinship care, it may be appropriate to seek such an order to secure a child's residence with a kinship carer and potential removal of parents' responsibilities and rights until such time as the child becomes adopted.

- ***"Kinship Care Order" under section 11 of the Children (Scotland) Act 1995***

This order secures a child's residence with a kinship carer, as well as potentially allocating parental responsibilities and rights and making stipulations about the child's contact arrangements with parents and other family members. The child is no longer "looked after" once a Kinship Care Order has been granted.

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About CELCIS

CELCIS is a leading improvement and innovation centre in Scotland. We improve children's lives by supporting people and organisations to drive long-lasting change in the services they need, and the practices used by people responsible for their care.

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