

## **Social Justice and Social Security Committee Kinship Care**

### **Briefing to Support Oral Evidence Session – 24<sup>th</sup> February 2022**

#### **Introduction and Context**

Social Work Scotland is the national professional leadership body for the social work and social care professions in Scotland. We are led by our members, and work to influence policy and legislation and to support the development of the social work and social care workforce. Alongside organisational support Social Work Scotland run a number of national projects around design and implementation of policy and legislation.

*Social work is defined as ‘a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing. The above definition may be amplified at national and/or regional levels.’ (Global definition of social work, International Federation of Social Workers, 2014)*

As an organisation, we welcome the opportunity to engage with the work of the committee in relation to kinship care support. Members of Social Work Scotland range from Chief Social Work Officers to front line managers, and we have been involved, as part of our policy and practice work, in many of the developments in fostering and kinship.

This work sits within the Getting It Right For Every Child policy and framework, and more recently the Promise and UNCRC commitments, to ensure that children who require alternative family care have their needs met, and that wherever possible this is with their extended family. Social Work Scotland are also involved with the Kinship Care Collaborative, and related key matters such as development of a national minimum allowance for foster care. As an organisation, we are supportive of and committed to the principles of GIRFEC, and to working with partners to make the Promise a reality.

The current landscape of kinship care is complex, and we seek in this briefing to highlight some of the background to that context and the issues which both agencies and kinship carers themselves grapple with, while acknowledging the commitment from both policy makers, practitioners and carers to work together to improve and support children in kinship care and their carers. In this, providing an environment that allows children to grow and flourish must be central.

The information in this briefing is gathered from practice knowledge over many years, national data, involvement in a range of kinship and fostering focused groups over the past 10 years, and material and data from local areas, groups and our members.

## **Kinship – Definition**

As noted, the landscape of kinship care is complex. Specifically, the context for the use of the term 'kinship care' varies depending on the legal context, and this can result in confusion. A child is in kinship care if:

- They are a looked after child, and have been placed by the local authority or a children's hearing with a relative or close friend. This is termed 'formal kinship care'
- They are subject to a Kinship Care Order (Children and Young Person (Scot) Act 2014, part 13) which gives the kinship carer residence rights and may also vest with the carer parental rights in relation to that child, and they are also an eligible child for the purposes of kinship care support. Eligibility, in relation to the child and carer, is outlined in the legislation, and means that a child was previously looked after, or at risk of becoming looked after, or was placed with the involvement of the local authority.
- A relative or close friend cares for them by agreement with the parent, but the state was not involved in this arrangement. Carers in this situation may have been granted a Kinship Care Order by the court, or there may be no such order in place. This is often referred to as 'informal kinship care'

Regardless of the legal position, all children have a right to the same level of care and security, and to have their needs met in line with GIRFEC – receiving the right support, at the right level and at the right time. The confusion that exists around kinship care status can often make it difficult for a carer to access the right support for themselves and the child they care for, or to understand the systems that surround them.

To expand on this:

- A looked after child is 'in care', with the same status as a child in foster care or residential care. The kinship carer is therefore caring for the child on behalf of the local authority. This child is subject to all the regulations related to looked after children, including planning, review of their care plan, decision making and the corporate parenting duties on local authority and partners apply.
- A child subject to a Kinship Care Order is not looked after and there is no statutory basis related to the KCO for the local authority to be involved in decisions about the wellbeing of the child. These sit with the carer and anyone else who holds parental responsibilities.
- Where a child subject to a KCO is also an eligible child, the local authority does have responsibilities in relation to kinship care support, including financial support

## **Kinship Care - Background:**

Scotland has a heritage of caring for her children within a family where a child's parents are unable to do so. This dates back many years, and forms the origins of our current foster care system. Relatives would often 'adopt' or care for a child when parents died, or were prevented by other reasons from caring for their child. This was usually an informal arrangement, and did not attract state support.

The Scottish legal system underlines the 'minimum intervention' principle, specifically laid out in the Children (Scotland) Act 1995. This means that the least level of state intervention should be applied. For example,

- If a child's care needs can be met without statutory measures of care via the Children's Hearing system, then this route should be taken i.e. a family agree to work with the local authority on a 'voluntary' basis rather than this being subject to compulsion via a compulsory supervision order.
- If a KCO would meet a child's needs rather than an adoption order, then this route should be taken, as it is a lesser level of intervention – the child retains their name, family and birth status.
- If a child's needs can be met by an agreement within a family about provision of assistance or support, then the state should not interfere unnecessarily with this arrangement

Relative foster care began to develop in a more formal manner in the latter part of the 20th century. Some relatives caring for a child were assessed as foster carers. There was however, no agreed framework for assessment, and assessment of a relative's suitability to care for a child was not applied consistently. Getting it Right for Every Child in Kinship and Foster Care in Scotland, published by Scottish Government in 2007 outlined the intention to provide improved support to kinship and foster carers. This led to a requirement for formal assessment of kinship carers of looked after children in subsequent legislation – the Adoption and Children (Scotland) Act 2007 – and began the move to support kinship carers of those looked after children in a similar manner to that provided to foster carers.

While there remains no requirement for formal assessment of kinship carers of non-looked after children, the Children and Young People (Scotland) Act 2014 Part 13 outlines the support that local authorities should have in place for eligible kinship carers with a Kinship Care Order.

Kinship care support across Scotland for both carers of looked after children, and eligible carers with a KCO now range from practical support such as finance, provision of set up costs and equipment, to advice, supervision and support groups and training. For many kinship carers, this support is critical to enabling them to provide a safe home for their relative, and to understand and manage care of a child who may have experienced significant trauma.

## **Financial Support:**

Part of the complexities of the kinship care landscape relate to finance. Early kinship placements tended to attract a specific 'relative' payment provided by the local

authority, with the rate often set as a proportion of the weekly allowance paid to foster carers. Following the 2007 Act, levels of payment to approved kinship carers (those formally assessed and approved as suitable to care for a looked after child) continued to vary significantly across the country.

This resulted in a challenge by the Equalities and Human Rights Commission, ultimately resolved by the Scottish Government agreeing to meet the costs involved in councils paying kinship care allowances at the same level as foster care allowances. This was implemented from 1<sup>st</sup> October 2015. Unexpectedly, this agreement was then applied also to those eligible kinship carers with a KCO i.e. those caring for a child who was previously looked after, at risk of becoming looked after, or placed with the involvement of the local authority.

This means that in relation to kinship carers with a KCO (often referred to as informal carers) there are some who receive a fostering equivalent allowance and others who do not. Interpretation of when a kinship carer or child is eligible varies, and this has resulted in attention and conflict around allowances, often to the detriment of a focus on other supports

An additional aspect to this area is the absence in Scotland of a national allowance for foster care. Scotland is the only one of the four nations making up the United Kingdom where there is no agreed national foster care allowance. This means that each local authority and registered independent fostering agency set their own rate of allowance. Most follow the approach of banding payments by age.

Scottish Government in 2017 led a national review of allowances, which reported in 2018. This resulted in agreement that a national allowance was appropriate, and what it should cover. This would apply to both fostering and kinship allowances, and recognised the specific aspects related to caring for a looked after child in foster or kinship care. The group also noted aspects unique to kinship carers who, unlike foster carers, can apply for child benefit and child tax credit, and the implications of the introduction of universal credit.

The recommendations of the allowances working group have yet to be implemented. This relates to both the impact of the covid pandemic, and the importance of this move being fully funded, something Social Work Scotland would support. Recent work is updating financial projections in anticipation of this being resolved and a national allowance applicable to both foster and kinship carers, being implemented in the very near future.

It should be noted that while this will ensure parity across the country in relation to financial provision, this only relates to looked after and eligible children subject to a KCO who are in kinship care. It does not resolve or progress the role of the benefits system in relation to wider support to kinship carers. Social Work Scotland remains of the view that this is where financial support to kinship carers of all non-looked after children is best provided to ensure equity or financial support, allowing local authorities to focus on looked after or formerly looked after children, and other areas of support.

### **Kinship Care Collaborative:**

The programme for government in 2020, set up the Kinship Care Collaborative with a view to agreeing and oversee improvements to the support provided to kinship carers, and therefore the children they care for. This was in recognition of the complexity of the kinship care landscape and in response to an expressed need by both by kinship carers themselves and those supporting them for greater clarity and equity in kinship care policy and practice. Scottish Government and Social Work Scotland jointly chair the group, with membership including representatives from across the spectrum of kinship care groups and agencies working in this area. The collaborative has considered current policy and legislation and groups are now working on agreed priorities which include a review of current legislation and definitions, identification of good practice and any gaps in provision, and improving consistency of support across the country.

The Kinship Care Collaborative has a critical role in resolving some of the issues that have been of concern to carers – and to those working in this field - over the years. Social Work Scotland are committed to working with carers and those who support them and their children, to enable the Collaborative to achieve its aim and remove some of the blocks which have in some cases unintentionally hampered provision of consistency and clarity of support.

### **Conclusion:**

Scotland has a stated goal that it be the 'best place in the world' to grow up. This means that our care for children both in their own families and in the range of alternative care where a child's needs or safety dictate this must be of an excellent standard.

Care of a child by a kinship carer is a critical part of this continuum of care, whether the child is looked after and therefore the state has specific duties, or the placement is informal. Social Work Scotland would acknowledge the need to distinguish between children who are looked after and those who are not, and recognise that where corporate parenting responsibilities apply the state has a very specific duty and care. Our commitment to GIRFEC and the Promise, and our understanding of the continuum of care and the importance of support throughout a child's journey, ensures equal support for work related to early help and family support provision.

While kinship support has extended and developed over the past 15 years, there remain inconsistencies. Social Work Scotland welcome this consideration of kinship care support by the Social Justice and Social Security Committee, and will continue to contribute to achieving consistency and ensuring that the support provided to kinship carers meets both their needs and those of the children in their care

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