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Kinship Care

In response to a request from the HSSPS Committee, this paper provides an insight into the complexities associated with kinship care in Northern Ireland. In particular, the paper considers:

- The legal framework for the care of children in Northern Ireland;
- Formal and informal types of kinship care;
- Statistics in relation to the number of kinship carers and children;
- Examples of support available to kinship carers and issues in accessing support;
- Kinship care policy and practice in the UK and the Republic of Ireland;
- Parental responsibility and the role of Special Guardianship Orders in kinship care.

This information is provided to Members in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as legal or professional advice, or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

Key Points

- Kinship care is the care of children by a family member or a family friend.
- Family or friends will often take on a child in emergency situations to avoid them going into care. The main aim of kinship care is family preservation and to offer permanency to children by keeping them close to their families and communities.
- Two main types of kinship care exist; formal and informal. Typically, formal kinship care concerns fostering arrangements and the involvement of Social Services. Most kinship arrangements are informal, that is, privately agreed between parents and relatives/friends, with no legal involvement from the State.
- The State does not interfere in family life unless to safeguard or protect the child's welfare. Locally, the Children (Northern Ireland) Order 1995 is the principal statute governing the care, upbringing and protection of children.
- For "looked after" children (children in care), the first duty of the Trust is to seek a home for them with their extended family. However, evidence suggests this option has not been utilised as often as it should; 1/3 of all "looked after" children (717) live in *formal* kinship arrangements.
- 8,000-10,000 children are estimated to live in *informal* kinship care in Northern Ireland, and the number of children living with relatives or friends is increasing.
- Kinship care is unique and can have a considerable economic and emotional impact on families. Research also shows that many kinship carers live in poverty. Financial and practical supports may be available from Social Services and/or the benefits system. However, this area is complex, and some children's needs may remain unmet because of the circumstances in which the kinship arrangement was made.
- Policies and practices regarding kinship care vary across the UK and Ireland:
 - Scotland has introduced a 'Fostering & Kinship Care' strategy (2007) and regulations (2009) to enable local authorities to provide an allowance to kinship carers.
 - England has introduced statutory guidance on 'Family and Friends Care' (2011), and a Private Members Bill about 'parental responsibility and kinship care' is currently before Parliament.
 - Northern Ireland is publishing 'Standards for Kinship Foster Carers' and regional policies and procedures in 2012.
 - Wales and the Republic of Ireland do not have a specific kinship care policy in place.
- Special Guardianship Orders (SGOs) are used in England and Wales to offer permanency to children who cannot return home but who do not want to sever the legal relationship with their parents through adoption. In essence, SGOs enable a child to no longer have "looked after status." In turn, parental responsibility is given to the carer - and this can be particularly useful in kinship situations. The DHSSPS intends to introduce SGOs in the forthcoming Adoption and Children Bill, however policy proposals as to how this may look in practice have not been agreed.

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1. Defining kinship care

Keeping families together is a key government priority.¹ However, for many reasons, it may not be possible for children to live with their parents, and in turn, they can find themselves living in ‘kinship care’ arrangements. Although broad definitions exist, kinship care is concerned with children who are cared for by a ‘relative’ - as defined in Art. 2(2) of the Children (Northern Ireland) Order, or by a family friend who has a prior connection to the child.² Kinship care is also known as ‘family and friends care’.

There are fundamental differences between kinship care and foster care that make it somewhat unique. Kinship care ‘*straddles the gap between care by birth parents and care by the State*’.³ Such arrangements can be a suitable option for children in the care system (termed “looked after” children)⁴, for those who have been assessed as “in need” (but who are not “looked after”), and for other children who are not known to the State. Care is usually provided on a full time basis, and can be short or long term.

1.1 Why do relatives and friends care for other children?

Family or friends will often take on a child in an emergency or crisis situation in order to avoid them being taken away from their families into care. There may be little warning, and a child may arrive with no advanced planning, particularly in cases of informal kinship arrangements (which is in contrast to kinship foster carers who undergo assessment and training in advance). Such situations can be extremely disruptive and upsetting for the child, and challenging for carers and their families.

Family and friends may take on a child due to a variety of circumstances. The most common relate to parental factors, for example: domestic violence, abuse, alcohol or substance misuse, mental or physical illness or incapacity, imprisonment, or the death of a parent.⁵ With the increasing number of single parent families, there may be times when the parent is unable to care for their child and they may seek help from relatives or friends. In other cases, a parent may be working away from home. Friends and relatives can also take on kinship care responsibilities because of child-related factors, such as a disability or challenging behaviours.

1.2 Benefits of kinship care to the child

The main aim of kinship care is to provide family preservation and to offer permanency to children by keeping them close to their own communities and families. This is aligned to the *right to a family/family life* as outlined in *United Nations Convention on the Rights of the Child* and the *European Convention of Human Rights*.⁶ In terms of continuity, it is

¹ The State does not intervene in family life unless it is deemed absolutely necessary and is considered to be in the best interests of the child.

² HSC Board guidance (2009) Definitions of private family arrangements, private fostering and kinship foster care See also statutory guidance in “Family and Friends Care” (Department for Education), England, pages 6 & 7. A friend/connected person could be for example, a teacher or a youth worker.

³ Hunt, J. (2001) Friends and Family Care – A scoping paper for the Department of Health, London, The Stationery Office p 47.

⁴ Children in the care system will be subject to a Care Order/Interim Care Order, which can last until the child is 18. The Trust gains parental responsibility for the child, which it then shares with the birth parents (if appropriate).

⁵ Department of Education “Family and Friends Care”, England, p 8.

⁶ United Nations Convention on the Rights of the Child (1989) Article 20. Available online at: www.dcsf.gov.uk/everychildmatters/strategy/strategyandgovernance/uncrc/unitednationsarticles/uncrcarticles/

widely accepted that children have more stability, feel safer, have a greater sense of belonging, and experience better life outcomes when placed near or within their own family circles.⁷ Kinship care can also reduce mental ill health, stigma and trauma in vulnerable children, especially for those who may otherwise be taken away from their family and placed in the formal care system. For example, a “looked after” child could be placed in an unfamiliar residential home or foster family.⁸ These events can cause great distress, and research shows that life outcomes for “looked after” children are generally lower than children who are placed with relatives or friends in kinship care.⁹

1.3 Legislation

In Northern Ireland, the Children (Northern Ireland) Order 1995 is the principal statute governing the care, upbringing and protection of children.¹⁰ Although beyond the scope of this paper, a more detailed overview of child care law is available from the Department.¹¹

Within the Children Order, courts and Social Services now have wide-ranging and flexible powers to regulate the exercise of parental responsibility and the protection of children; with their needs and best interests at the centre of any decision.

The Trust has a general duty to provide *personal Social Services* for children assessed as “in need” and their families or relevant ‘others’.¹² Being “in need” means that the child is unlikely to achieve a reasonable standard of health and development without Social Services support (Art. 17). This includes children who are disabled. The family may receive additional support so that a child can remain at home (Art. 18). Supports could include parenting skills or help with aspects of the child’s development. However the range and level of services are left to the Trust’s **discretion** and only in ‘exceptional’ cases can cash payments be made to the family.¹³

If there are more serious difficulties in caring for a child at home and it is not possible or in the child’s best interests for them to remain there, a decision can be taken for a statutory agency (HSC Trust) to become **legally involved** in looking after the child.¹⁴ However, under the Order, children do best in families and will only be removed as a last resort, in order to safeguard or protect their welfare.¹⁵ In these instances, the first duty of the Trust is to seek a home for them with their extended family. The child becomes “looked after”.¹⁶

European Convention on Human Rights Article 8. Available online at: www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf

⁷ Children 1st Kinship care - A family centered approach, p 1. Available online at: http://www.children1st.org.uk/common/uploads/what_we_do/kinship_care.pdf

⁸ Winokur, M. et al., (2008) Matched comparison of children in kinship care and foster care on child welfare outcomes. Families in Society. Volume 89. No 3, p339.

⁹ Burgess, C et al, (2008) ‘Children’s Voices in Kinship Care’: the report of a research study about the experience of children in kinship care. Published by Children 1st and the University of Stirling.

¹⁰ There are also a number of supporting regulations regarding the kinship care concerning “looked after” children such as Fostering and Adoption Regulations, United Nations Convention on the Rights of the Child (UNCRC), and the Human Rights Act 1998

¹¹ See DHSSPS Northern Ireland Child Care Law <http://www.dhsspsni.gov.uk/child-care-law-roughguide.pdf>

¹² Personal correspondence from DHSSPS with the author dated 19.1.12.

¹³ Article 18 (6) This is unlike guidance in England where regular payments are made to support the child.

¹⁴ <http://www.education-support.org.uk/parents/looked-after-children/>

¹⁵ DHSSPS Northern Ireland Child Care Law <http://www.dhsspsni.gov.uk/child-care-law-roughguide.pdf> p 22.

¹⁶ Under Part 4 of the Order, a child will have “looked after” status if is/he is provided with accommodation by the Trust for a continuous period of more than 24 hours.

Depending on their best interests, these children can be placed with family, in foster or residential care, or for adoption.¹⁷

2. Formal and informal kinship care arrangements

The legislation in Northern Ireland makes no distinction between formal and informal kinship care.¹⁸ A child who lives with a kinship carer does not necessarily mean that s/he has been given “looked after” status by the Trust.¹⁹ The DHSSPS has confirmed that it has not carried out specific research into kinship care arrangements,²⁰ and very little is known about the majority of these arrangements in the UK.²¹ Nevertheless, the main types of formal and informal kinship care arrangements are discussed below.

2.1 Informal arrangements:

- A **private or voluntary agreement** made between parents and relatives/friends. There is no legal requirement to notify Social Services, and they are not involved unless there is a safeguarding issue. “Relatives” are family members as prescribed in Art. 2 of the Children Order.²² It is thought that informal arrangements make up the majority of kinship care arrangements.
- A child is assessed by Social Services as being “**in need**” but is not termed “looked after” (i.e. does not need to be taken into formal care).

2.2 Formal arrangements:

- A private arrangement is made between the family and someone who is not a “relative” (as per Art. 2 of the Children Order).²³ An example would be a child living with a family friend because of problems in the home. These carers fall under legislation in regard to **private fostering** (Art. 106-117).²⁴ However, the child is **not** placed with foster carers who are approved by Trusts or independent fostering agencies. For placements over 28 days, Social Services must be informed in order to be satisfied about the suitability of foster parent(s), accommodation standards and so forth.²⁵ It is not known how many placements lasting more than 28 days go unreported in Northern Ireland.
- When Social Services are involved with a family and the child is formally assessed as “**looked after**”, Trusts have a statutory duty regarding their welfare and must provide accommodation and maintenance for the child.²⁶ The Trust will seek to place the child with an **approved foster carer**.²⁷ Therefore, potential kinship carers will need to be formally assessed and approved as foster carers.²⁸ The Trust will make visits and keep

¹⁷ DHSSPS Care Matters in Northern Ireland – A bridge to a better future (2007), p 12.

¹⁸ The term ‘formal kinship care’ has been used recently by the Department to describe an arrangement involving a child, who is a “looked after child” under the Children Order who is placed with a kinship foster carer.

¹⁹ Personal correspondence between the author and Kate Lewis at The Fostering Network on 6.1.12.

²⁰ Personal correspondence from DHSSPS with the author dated 9.1.12.

²¹ Nandy, S. et al, (2011) Spotlight on kinship care. Using census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century. (University of Bristol), p 114.

²² Children (Northern Ireland) Order 1995 Article 2 Available online at:

<http://www.legislation.gov.uk/nisi/1995/755/article/2/made>

²³ DHSSPS Private Fostering ‘Taking care seriously’ leaflet p.2. A relative is defined as a grandparent, brother, sister, uncle or aunt (whether of the full blood or half-blood by affinity) or stepparent.

²⁴ See: The Children (Private Arrangements for Fostering) Regulations (NI) 1996 (S.R. 1996 No. 453).

²⁵ Personal correspondence by the DHSSPS to the researcher. Response dated 19.1.12.

²⁶ HSC Trust Fostering Website. Available online at: <http://www.fostering.hscni.net/> Website accessed 12.1.12.

²⁷ DHSSPS Northern Ireland Child Care Law “A rough guide” p 18. Available online at:

<http://www.dhsspsni.gov.uk/child-care-law-roughguide.pdf>

²⁸ Typically, short term assessments take 12 weeks; full kinship foster care assessments take around 6 months; NI Assembly Question AQW4855/11-15 Pat Ramsey to ask the HSSPS Minister to detail the average length of time for short and long term kinship care assessments. Response dated 21.11.11

records of the placement. These carers are distinct from traditional foster carers in that they agree to look after a particular child they know/have a relationship with, rather than being willing to take on *any* child who requires a placement.²⁹

Nevertheless, the distinction between kinship arrangements that involve Social Services and those that do not, is sometimes blurred. For example, Social Services could encourage a kin to care for a child without any court proceedings and without the parents involvement – as may be the case if there are child protection concerns. This avoids the child becoming “looked after”. Social Services do not remain involved, as the arrangement is viewed as private. Yet sometimes these temporary arrangements become long term, leaving carers with little support. In turn, the variety of kinship circumstances makes this a complex area for policy makers.

3. Northern Ireland statistics

In Northern Ireland, around four times more children live in kinship care than both residential care and traditional foster care.³⁰ Data also shows that the number of children living with relatives or friends is on the increase.³¹ The variety of statistics below illustrate how difficult is it to estimate the actual number of kinship carers:

- There are around 2,600 “looked after” children in Northern Ireland. The number of “looked after” children in formal kinship arrangements is small compared to the total number of children living with kinship carers.³² In March 2011, there were **717** children in formal kinship foster care in Northern Ireland.³³ This is around one third (29%) of all “looked after” children.³⁴
- There are approximately 1,900 HSC approved local foster families, of which **450** (25%) are ‘family and friends carers’.³⁵
- As some kinship arrangements do not require the involvement of the State, these children and families do not appear in official statistics and much less is known about them.³⁶ One study using census data from 2001 showed that **5,200** children were recorded as ‘living with a kin’ in Northern Ireland at that time.³⁷ **90%** of the children were doing so **informally**³⁸ and most lived in the Belfast area. Half (49%) were being cared for by a sibling, 41% by a grandparent, and 1% by ‘other relatives’. The study also showed that many kinship carers go unrecognised and unsupported, and that kinship families were more likely to experience poverty.³⁹

²⁹ Kidner, C (Jan 2012) SPICe Briefing Kinship care. The Scottish Parliament, 12/05 p4.

³⁰ Nandy, S. et al, (2011) Spotlight on kinship care. Using census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century, (University of Bristol), p 1.

³¹ Richards, A. & Tapsfield, R. (2003) Family and friends care: the way forward. London: Family Rights Group.

³² According to the DHSSPS, information is not held centrally on the legal status of looked after children by kinship care arrangement.

³³ NI Assembly: Hansard Official Report, HSSPS Minister “Kinship care”, p 206. Available online at: <http://www.niassembly.gov.uk/Documents/Official%20Reports/Plenary/2011/111129.pdf>

³⁴ HSC Board End of Year Delegated Statutory Functions Monitoring Rounds.

³⁵ Data obtained from NI’s Health and Social Care website and The Fostering Network website.

³⁶ NI Assembly: Hansard Official Report, HSSPS Minister Kinship care, p. 206. Available online at: <http://www.niassembly.gov.uk/Documents/Official%20Reports/Plenary/2011/111129.pdf>

³⁷ Nandy, S. et al, (2011) Spotlight on kinship care. Using census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century, (University of Bristol), p 1.

³⁸ In this study, data constraints led to formal kinship being defined as: ‘looked after’ children with relatives who are approved foster carers. All other arrangements with carers who were relatives were termed informal kinship care.

³⁹ Nandy, S. et al, (2011) Spotlight on kinship care. Using census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century, (University of Bristol), p 75.

- Yet more recent estimates suggest the actual number of children living in **informal** kinship arrangements in Northern Ireland is around **8,000-10,000**.⁴⁰

Without accurate figures, it is difficult to know the full extent to which kinship care is occurring. The DHSSPS stated it is their intention to use 2011 Census returns to establish a baseline, where possible, to highlight the extent of kinship care in NI.⁴¹

4. Parental Responsibility

Kinship carers do not have parental responsibility for the children in their care as shown in Table 1,⁴² and this can prove problematic in some circumstances as carers have little autonomy. Under the Children Order, parental responsibility remains with parents, unless a court rules otherwise (for example, individuals can apply for parental responsibility through an Adoption or Residence Order). The Order defines parental responsibility as “*all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property*”. This includes the entitlement to make all major decisions about the child’s welfare for example, their name, place of residence, medical treatment and so forth.

| Informal kinship care | Who has parental responsibility? |
|---|--|
| Voluntary arrangement between parents and relative/friend | Birth parent. This can result in issues for example, regarding the carer being unable to consent for medical treatment for the child. |
| Child deemed “in need” but not “looked after” | Birth parent. As above, there may be issues in giving consent. |
| Formal kinship care | Who has parental responsibility? |
| Private fostering arrangement | Birth parent. <ul style="list-style-type: none"> • Under Art 5(8) of the Children Order, someone with parental responsibility can delegate responsibility to the carer, for example regarding medical treatment. • A carer (without parental responsibility) can also be empowered to ‘do what is reasonable to safeguard the welfare of the child under Art 5(6).’ |
| “Looked after” child approved foster kinship carers | The Trust becomes the corporate parent of the child. <ul style="list-style-type: none"> • The Trust and parent can give delegated authority to enable a foster carer to make day-to-day decisions without having to be consulted first. |

Table 1. Parental responsibility in formal/informal kinship care situations⁴³

5. Kinship supports

As previously highlighted, kinship carers can take on caring responsibilities within extremely complex family circumstances. Rearing a child is resource intensive and carers will often need additional resources (such beds, nappies or safety equipment).⁴⁴ In

⁴⁰ Williamson, J (2011) Kinship Care Northern Ireland. Is all fair in kinship care? p 2.

⁴¹ Personal correspondence by the DHSSPS to the researcher. Response dated 9.1.12.

⁴² Further information is available at DHSSPS Northern Ireland Child Care Law “A rough guide” p 23. Available online at: <http://www.dhsspsni.gov.uk/child-care-law-roughguide.pdf>

⁴³ Data obtained from personal correspondence with DHSSPS; response dated 19.1.12

⁴⁴ Family Rights Group (2010) The Harsh Reality: A survey on the financial circumstances of family & friends carers

addition, a kinship arrangement can cause other tensions amongst the wider family circle. Research shows that kinship caring has a considerable economic impact on families; on grandparents who live alone and may also have a disability or chronic illness;⁴⁵ other carers have to give up work or reduce employment hours to take on the caring responsibilities; single kinship carers are on the increase, as are sibling kinship carers who are bringing up younger brothers or sisters.⁴⁶ For many of these families, life can be a struggle and additional support is often required. However a persistent theme in the research shows that kinship carers are not receiving adequate support.

5.1 Financial Supports

The issue of financial support for kinship carers is complicated. Unless a child has “looked after” status, a kinship carer will not have an automatic right to access support payments from the Trusts. However, there is an onus on Trusts to provide this information to these carers. Table 2 highlights some of the assistance that may be available.

| Informal Kinship | Is a support allowance paid by Trusts? | Is the carer eligible for other benefits? |
|--|--|---|
| Voluntary arrangement between parents and relative/friend | No. Support may only be available if the child becomes known to Social Services and is assessed as being “in need”, and these are at the Trust’s discretion. | If on a low income, the carer may be eligible to claim child benefit/child tax credit/working tax credit (if applicable), only if birth parent isn’t doing so. |
| Child deemed “in need” | Trust has a general duty to provide <i>personal Social Services</i> under Art. 18 of Children Order. However, these are discretionary powers. | If on a low income, the carer may be eligible to claim child benefit/child tax credit/working tax credit (if applicable), only if birth parent isn’t doing so. |
| Formal Kinship | Is a support allowance paid by Trusts? | Is the carer eligible for other benefits? |
| Private fostering arrangement | Carers that report the arrangement to Social Services and where the child has a need identified may be eligible for support. The DHSSPS has advised it may also give assistance in a short period of financial hardship, if there is a fall in maintenance payments, which can be recovered from the parent. The carer may also receive ‘necessary’ advice through a social worker, health professional, or through training. | Parents/friends may negotiate between them what payment is appropriate before the placement begins. A carer may be able to qualify for child benefit/ child tax credits (if applicable) and if Social Services is not paying anything to help with child’s accommodation or maintenance. |
| “Looked after” child approved foster kinship carers | Yes, fostering allowance;(See section 5.1) | Once carer receives the fostering allowance, they cannot claim child benefit or tax credit (for the looked after child). However, in the interim period when child is placed with carer and the fostering allowance has not come through, the carer can claim. |

Table 2: Examples of support entitlements for formal/informal kinship carers⁴⁷

⁴⁵ Wellard S. (2011) Too old to care? The experiences of older grandparents raising their grandchildren. Executive Summary. Grandparenting Plus p 3.

⁴⁶ The Fostering Network (2011). Family and Friends Foster Care, p 10.

⁴⁷ Data obtained from the DHSSPS via email correspondence with the author on 9.1.12 and 19.1.12.

There may be a range of other benefits available to carers (such as pension credit), depending on their individual circumstances and further information is available from the Department of Social Development.

5.1 Supports for formal kinship carers

According to the DHSSPS, foster carers (**including** kinship foster carers) are paid a maintenance allowance in line with the National Minimum Rates, which were introduced in England in 2006. These cover the daily *costs of looking after the child* and are based on the child's age. At present, allowances range from £114-£168 per week.⁴⁸ Foster carers also receive additional payments for other essential items, such as holidays, birthdays and Christmas. The current rates of maintenance allowances in place from April 2011 are shown in Table 3 below.⁴⁹

| Age group | Fee per week | Fee per 4 weeks | Per Annum |
|-----------|--------------|-----------------|-----------|
| 0-4 | £114 | £456 | £5929 |
| 5-10 | £126 | £504 | £6552 |
| 11-15 | £145 | £580 | £7542 |
| 16+ | £168 | £672 | £8736 |

Table 3 Fees paid to foster carers by child's age range (Northern Ireland)

In certain circumstances, enhanced allowances or fees are made in addition to the maintenance allowance in acknowledgement of the greater time/effort needed to provide care. These are assessed on an individual basis, and agreed by the child's social worker and foster carer. If agreement cannot be reached, a foster carer can seek recourse through the Trust's complaints procedures. In terms of other types of support for the carer, the DHSSPS stated:⁵⁰

*All **approved foster carers** (kinship and non-kinship), are provided with a **link worker**, whose role is to **support and advocate** for the foster carer so that the needs of the child in placement can be fully met. In addition, the Trust provides a **training programme** delivered by a senior practitioner to meet specific assessed needs. Carers also receive support from the organisation, **Fostering Achievement (which is part of the Fostering Network)**, to meet the identified **educational needs** of the child and to facilitate **participation in sport and other activities** to promote self-esteem and self-confidence.*

5.2 Issues about support for formal kinship carers: The Munby Judgement

In NI, anecdotal evidence would suggest that these carers do not always receive information about support they may be eligible for in a timely fashion, and there are some inconsistencies in terms of financial and practical support received (such as a link worker, specialist advice, and training).^{51, 52} In addition, although kinship foster carers of "looked after" children are entitled to a fostering allowance, it has been suggested that payments

⁴⁸ Health and Social Care Website: Fostering: What help do foster carers receive? Available online at: <http://www.fostering.hscni.net/information.php?link=whathelp>. Website accessed 9.1.12.

⁴⁹ Ibid

⁵⁰ Personal correspondence by the DHSSPS to the author. Response dated 9.1.12.

⁵¹ For example, only 2 kinship carers received training in the Belfast Trust in 2011. Assembly Q.4167/11-15

⁵² Williamson, J (2011) Kinship Care Northern Ireland. Is all fair in kinship care? p 7.

and/or other types of practical supports have not always been forthcoming from Trusts on the same basis as traditional foster carers.⁵³

In 2001, an English court ruled in favour of relative foster carers who were not being paid the same rate towards the cost of caring for a child by their local authority (Trust equivalent) as non-kinship foster carers.⁵⁴ This became known as the Munby Judgment.⁵⁵ The Judgment ruled that a local authority's policy that financially discriminated against foster carers who were related to the children they fostered was unlawful.⁵⁶ More recent cases in England and Wales have also ruled in favour of kinship grandparents who won cases against their local councils/authorities for the not providing remuneration equivalent to traditional foster carers.^{57,58}

In response to an Assembly Question about the Munby Judgement, the HSSPS Minister stated: *"the HSC board has indicated that while there are no direct measures in place in terms of monitoring [Munby], all five Trusts have indicated that they are compliant with the Munby Judgement. Specific funding has not been allocated to enforce the Munby Judgement in the last three years, rather, Trusts are required to deliver all their legislative responsibilities from within their overall financial envelope"*.⁵⁹

In addition to the lack of monitoring funding, another issue arises. As the DHSSPS budget for 'kinship foster carers' is lumped together with 'non-kinship foster carers', it is not possible to compare if there is equality in terms of payments between kinship foster carers and non-kinship (traditional) foster carers.⁶⁰

The Minister was also asked recently if he was aware of any problems with payments to formal kinship carers in any of the five health Trusts. He responded *"The Chief Social Services Officer has not made me aware of any, although that is not to say there are none. We try to make the system supportive of children in the first instance, and to those families in which we have had to intervene, we give sufficient support to ensure that the children can be cared for."*⁶¹

5.3 Supports for informal and voluntary carers

With regard to informal kinship care, the DHSSPS has advised that:

*Services and supports available to vulnerable children living in kinship care, under arrangements approved by Social Services, are the same as those available to any child identified as "in need" of either **safeguarding or family support**. In accordance*

⁵³ Williamson, J (2011) Strengthening and supporting Kinship Care in Northern Ireland. p 3.

⁵⁴ The Community Foundation for Northern Ireland; Kinship Care Northern Ireland; Policy Brief, Issue 5. p 3.

⁵⁵ Queen's Bench Division. (September 2001) Munby Judgment. R (on the application of L and others) v Manchester City Council; R (on the application of R and another) v Same.

⁵⁶ BBC News (30 August 2008) Relatives warned over foster pay. Available online at <http://news.bbc.co.uk/1/hi/programmes/moneybox/7589726.stm>

⁵⁷ Watson, R. (2010) Ruling gives kinship carers hope (payment for grandparents). Children and Young people Now p12.

⁵⁸ Public Services Ombudsman for Wales (2010). Report under Section 16 of the Public Services Ombudsman Act 2005 of an investigation into a complaint made against Merthyr Tydfil County Borough Council.

⁵⁹ Assembly Question AQW4607/11-15 Mr M. Copeland to ask the HSSPS Minister what measures, including financial provision, have been put in place to ensure that Social Services adhere to the terms of the 2001 Munby Judgement. Response dated 16.11.2011

⁶⁰ DHSSPS response for request for information from Jane Campbell; NI Assembly

⁶¹ Northern Ireland Assembly (29 Nov 2011) Question Time:Kinship Care. Response to question by Mr M Durkan.

with the law, the primary focus of Trusts is on the provision of services to meet the identified needs of the child and to satisfy his/her best-interests.

5.4 Issues for voluntary and informal carers not known to the State

For those in informal kinship arrangements, children are far less likely to be known to Social Services. Therefore, these families will receive little or none of the support (such as training, advice, respite) provided to “looked after” children in formal kinship foster care or in traditional foster care.⁶² Undoubtedly, many informal kinship carers prevent children going into the formal care system and can save the State costs in doing so. This is despite research which suggests that many of the children will have similar (or even greater) needs and issues -such as abuse or neglect as “looked after” children.⁶³

Not all informal kinship carers will require support. However, for those that do, getting any is difficult. This may also be a contributing factor to why so many of these carers live in poverty. Advocates suggest that much of the complexity around this issue centres on the legal status of the child (whether the child is “looked after” or not), rather than on actual need.⁶⁴ A key issue then becomes, how can families in those kinship care arrangements who have a child who is not known to Social Services, be supported in a way that meets the child’s needs, identifies potential risks, and also supports the carer or kinship family’s needs, should they require it?

5.5 Why carers may not seek support

There are several reasons why kinship carers in voluntary/informal care arrangements may not ask for help. For example, they may not wish to appear unable to cope; nor to have Social Services be involved in a formal capacity for fear the child may be taken away from them; they may feel embarrassed about their relative or friend’s situation, or they may not have enough information about the type of supports available they could be entitled to, nor the system in general.⁶⁵ It has also been suggested that family members have also been deterred from coming forward to be approved as foster carers because of the bureaucracy associated with becoming a foster carer.⁶⁶

6. Kinship care policy UK and Ireland

Turning now to kinship care policies and practices, these vary across the UK and Ireland as discussed in the following section.

6.1 Scotland

In Scotland, kinship carers of looked after children are not approved as “kinship foster carers”, rather they are approved as “kinship carers”.

In 2006, the Scottish Executive consulted on proposals for a *National Fostering and Kinship Care Strategy*.⁶⁷ A year later, the Scottish Government and COSLA (the Scottish

⁶² Roth et al, (2010) Family and friends care, Family Rights Group. p9.

⁶³ Nandy, S. et al, (2011) Spotlight on kinship care. Using census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century, (University of Bristol), Executive summary p 5.

⁶⁴ Williamson, J (2011) Kinship Care Northern Ireland. Moving forward with kinship care in Northern Ireland, p 3.

⁶⁵ Department of Education “Family and Friends Care”, England p Available online at:

<https://www.education.gov.uk/publications/eOrderingDownload/Family%20and%20Friends%20Care.pdf>

⁶⁶ DHSSPS (2007) Care matters in Northern Ireland – A bridge to a better future 2007 p 32.

⁶⁷ Consultation available online at: <http://www.scotland.gov.uk/Resource/Doc/159529/0043403.pdf>

local government association) published *Getting it Right for Every Child in Foster and Kinship Care*.⁶⁸ During 2007, the Scottish Government and COSLA also made a commitment through a Concordat that by 2011 kinship carers of “looked-after” children would receive support, including allowances, equivalent to that provided to foster carers.⁶⁹ For traditional foster carers in Scotland, there is no statutory minimum allowance, however the Scottish government has recommended that approved kinship carers receive the same levels of allowance as traditional foster carers. In practice, this does not always happen and payments for approved kinship carers vary between local authorities. In the past, the Scottish Government also funded the Citizens Advice Scotland ‘Kinship Care Advice and Information Service’ which provided advice to kinship carers, and a new advice line is being funded until 2014 and provided by Children 1st.⁷⁰ The Scottish Government has also made various representations to the UK Government about the effect of welfare benefits on kinship care payments.

Scotland has also developed *Looked After Children (Scotland) Regulations 2009* which provides for the assessment of kinship carers and enables local authorities to pay an allowance to approved carers. As informal kinship carers do not fall under the regulations, local authorities have no obligation to make payments to kinship carers of children who are not 'looked after', but they can make payments if they believe it is in the best interests of the child.⁷¹ *Moving Forward in Kinship and Foster Care* (2009) provides further consideration of the work needed to strengthen kinship care.⁷² It also makes recommendations that “the eligibility of kinship carers for State benefits needs to be unraveled so that kinship carers receive adequate universal benefits”.⁷³

6.2 England

The *Children Act 1989* states that local authorities are under a duty to make arrangements for “looked after” children to live with relatives/friends if it is consistent with their welfare.⁷⁴ The *Children and Young Persons Act 2008* also states that “family and friends care” should be the first option for such children.

Statutory guidance on “*Family and Friends Care*” was issued to local authorities in England in 2011.⁷⁵ It states that children should receive the support that they and their carers need to safeguard and promote their welfare, **whether or not they are “looked after” or in informal arrangements**. The guidance also sets out what local authorities should do to deliver more effective services.

Whilst recognising the requirements which may go with a particular legal status, it is essential that services are not allocated solely on the basis of the child’s legal status, and that commissioners and providers of services are aware that many children in

⁶⁸ The Scottish Government. *Getting it right for every child in kinship and foster care*. ISBN: 978-0-7559-5592-3

⁶⁹ Kidner, C. (2010) SPICe briefing for the Public Petitions Committee Kinship Care, Scottish Parliament p 1.

⁷⁰ See Citizens Advice Bureau Scotland: <http://www.cas.org.uk/Projects/kinship-care> and Children 1st:

<http://www.children1st.org.uk/services/171/useful-information>

⁷¹ Citizens Advice Bureau Scotland. Kinship Care. Available online at: <http://www.adviceguide.org.uk/scotland/your-family/familyand-personal-issues-index-scotland/kinship-care-scotland.htm>

⁷² Scottish Government Report available online at <http://www.scotland.gov.uk/Resource/Doc/262356/0078450.pdf>

⁷³ Children Act 1989. Available at <http://www.legislation.gov.uk/ukpga/1989/41/contents>

⁷⁴ The Children Act (1989). Available online at <http://www.legislation.gov.uk/ukpga/1989/41/contents>

⁷⁵ Department of Education “Family and Friends Care”. Available online at:

<https://www.education.gov.uk/publications/eOrderingDownload/Family%20and%20Friends%20Care.pdf>

family and friends care have experienced multiple adversities similar to those of children who are looked after by local authorities. Where support services are identified as necessary to meet the child's needs, these should not be withheld merely because the child is living with a carer under an informal arrangement rather than in a placement with a foster carer or with a person with a residence or special guardianship order or an adopter.⁷⁶

The guidance also states:

No child or young person should have to become a looked after child, whether by agreement with those holding parental responsibility or by virtue of a court order, for the sole purpose of enabling financial, practical or other support to be provided to the child's carer.⁷⁷

6.2.1 Private Members Bill (Westminster)

In 2011, a Private Member's Bill known as the "**Kinship Carers (Parental Responsibility Agreements) Bill**", had its first reading in Westminster.⁷⁸ Its purpose is to enable kinship carers to obtain parental responsibility for a child without having to bring the case to court.⁷⁹ In the proposed Bill, kinship carers would be able to authorise school trips; register the child with a GP and be entitled to make medical decisions on the child's behalf; to apply for a passport; demonstrate that they are the primary carers with regard to accessing child benefit, and qualify for parental leave and the right to request flexible working arrangements. The Bill will apply to those defined as a 'relative' under the *Children Act*: grandparents, brothers, sisters, uncles or aunts. It will not apply to friends/wider family carers such as cousins. This is to ensure that arrangements remain distinct from private fostering arrangements which require regular local authority checks. The second reading of the Bill is due in March 2012.

6.3 Wales

The Welsh Government has no specific programme or policies for kinship care, other than the current UK legislation and the *Fostering Regulations Wales, 2003*. Rather, determining support is left to each local authority based on their assessment of the child's needs, and their interpretation of the legislation.⁸⁰ According to the *Fostering Network Wales*,

It would appear from hearing of the experiences of members of the public and foster carers, that each local authority undertakes its own arrangements and do not work to any regional or Wales-wide standardised policy. In general terms, the response of local authorities regarding support appears to be varied, either:

⁷⁶ Department of Education "Family and Friends Care". Available online at: <https://www.education.gov.uk/publications/eOrderingDownload/Family%20and%20Friends%20Care.pdf> p10.

⁷⁷ Department of Education "Family and Friends Care". p12

⁷⁸ House of Commons 'Kinship Carers (Parental Responsibility Agreements)' First reading 7.6.11 Available online at: http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110607/debtext/110607-0002.htm#_11060749000001

⁷⁹ This is usually in the form of a Special Guardianship Order (not available in NI currently) or a Residence Order.

⁸⁰ Information obtained from correspondence with the author to The Fostering Network Wales on 30.1.12.

*Kinship carers become registered foster carers in due course, or, kinship carers who are not registered foster carers do not receive any financial support, or, if the child is deemed “in need”, the carer may receive payments from time-to-time under Section 17 of the Children Act.*⁸¹

6.4 Northern Ireland

Currently, Northern Ireland does not have a specific kinship care policy and there are no plans as yet for one to be introduced.⁸²

In 2007 the DHSSPS developed a departmental strategy entitled “**Care Matters – a bridge to a better future**”. It also found that kinship care **was not** considered often enough as a first option for children.⁸³ In turn, *Care Matters* sets out a number of proposals to reduce the number of children entering the care system, and to improve the number of kinship carers and the supports available to them.

*...We need measures to encourage extended family members to become involved and sometimes to help care for children who would otherwise become “looked after”.*⁸⁴

In 2010, the DHSSPS developed draft “**Standards for kinship foster carers in Northern Ireland**”.⁸⁵ These standards specify the arrangements, services, support and procedures that need to be in place to ensure the unique needs of **kinship foster carers** and the children they foster are met. The standards focus on:

- placing the child/young person at the centre of the fostering process and making their welfare, safety and needs paramount;
- providing services on a regional basis across Northern Ireland;
- providing services which are consistent, effective, efficient and capable of achieving high level output; and
- equity of service provision for all young people and carers.

The DHSSPS have also advised that regional kinship foster care policies and procedures are being developed.⁸⁶ It is envisaged that a new assessment process and training for carers will be introduced. This, it is hoped, will encourage more kinship foster carers to come forward. It is intended that this will also give greater protection to “looked after” children. The *Standards* are due for publication early in 2012 and the *Regional Policies and Procedures* are due soon afterwards.⁸⁷ However, it is not known whether any further guidance will be provided which considers those in informal kinship arrangements.

In 2011 the DHSSPS also published a Review of Health and Social Care in NI (also known as the Compton Review). It states:

⁸¹ Ibid

⁸² NI Assembly AQW 4469/11-15 Mr David McIlveen to ask the HSSPS Minister whether he intends to introduce a kinship care policy. Response dated 14.11.2011

⁸³ DHSSPS (2007) *Care matters in Northern Ireland – A bridge to a better future* 2007 page 26.

⁸⁴ DHSSPS (2007) *Care matters in Northern Ireland – A bridge to a better future* 2007 page 13.

⁸⁵ Document available online at http://www.dhsspsni.gov.uk/draft_standards_for_kinship_foster_carers_in_northern_ireland_-_april_2010.pdf Website accessed 11.1.12

⁸⁶ Personal correspondence by the DHSSPS to the researcher. Response dated 9.1.12

⁸⁷ NI Assembly debate. Hansard Official report. Sexual Exploitation of Children and Young People in or Missing from Care, 12 December 2011. Available online at: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-11-12/12-December-2011>

*The overarching principle set out within the Children's (NI) Order that children are best cared for within the family of origin will continue to shape interventions and service delivery. **The Review supports the development of advocacy, information services and training in the support of kinship care.***⁸⁸

The area of kinship has also been gaining attention through local advocates. For example, Kinship Care NI is a local charitable organisation that has been campaigning for better supports for carers, and for kinship care to be used more widely as a preventative model for children, who would otherwise have to go into care and face poorer life outcomes.⁸⁹

6.5 Republic of Ireland

The Republic of Ireland (RoI) also does not have a specific Kinship Care policy despite the substantial number of children who live in foster care with relatives. Relatives who apply to care for a child or young person under the *Child Care Act (1991)* participate in a comprehensive assessment of their ability to care for the child and are approved by the Health Board. The *Child Care (Placement of Children with Relatives) Regulations (1995)* provides the relevant statutory guidance. The RoI has also published *National Standards for Foster Care (2003)* which only apply to formal relative carers.⁹⁰ There are no references regarding any plans to regulate informal kinship arrangements.

7. Special Guardianship Orders

The final section of this research paper discusses the role of Special Guardianship Orders (SGOs) and their equivalents in the UK. An SGO can provide stability for children, including children in kinship arrangements, who are unable to live with their birth parents.⁹¹ It was envisaged SGOs would be particularly appropriate for children in long term foster placements. SGOs do not extinguish the legal link between the child and natural parents, as would be the case if the child was adopted.

7.1 England and Wales

In England and Wales, Special Guardianship Orders (SGOs) came into force in 2005. The *Adoption and Children Act 2002* provides the legal framework for special guardianship.⁹² In many ways SGOS are designed as a 'halfway house' between long-term fostering and adoption, offering children permanence and guardians more freedom to make day-to-day decisions (for example, where they go to school and authorising medical treatment). This ends the situation where carers are forced to seek local authority permission for school trips and so forth. The Order does not remove parental responsibility from the child's birth parents, although their ability to exercise this is *extremely limited*.⁹³ In addition, children in care will come out of foster care and no longer be considered "looked after" by the local authority.⁹⁴ At present, SGOs are mainly granted to former foster carers and there

⁸⁸ DHSSPS Transforming your care. Available online at: <http://www.dhsspsni.gov.uk/transforming-your-care-review-of-hsc-ni-final-report.pdf> p 92.

⁸⁹ Williamson, J (2011) Kinship Care Northern Ireland. Moving forward with kinship care in Northern Ireland, p2.

⁹⁰ Oireachtas Library and Research Service (January 2012) Kinship policy in fostering briefing paper.

⁹¹ Department for Education (2005) Your guide to Special Guardianship a new option for children needing permanent families, p 6.

⁹² This amends the 1989 *Children Act* to make provisions for SGOs.

⁹³ Family and Social Services Information Team. Special Guardianship Orders. Available online at:

http://www.fassit.co.uk/special_guardianship_orders.htm

⁹⁴ Barnardos UK Adoption and Fostering. Available online at

appears to be increasing uptake among grandparent kinship carers. Figures show there were 760 Orders granted in 2007 and 1,740 in 2011.⁹⁵

Importantly, financial support may be paid to a carer *prior* to an SGO being awarded. State benefits and tax credits are available to special guardians in the same way as they are for any parent. The *Special Guardianship Regulations (2005)* set out local authority duties to provide support services, which includes financial supports. Yet in practice, the level of payments can vary, as support is based on the particular support needs of the Child (Regulation 12). Guidance has also been issued to local authorities to ensure they comply with the duties contained in the Regulations. Case law has also clarified that payments cannot be lower than fostering allowance levels.⁹⁶

However, there may be disincentives for going down the SGO route. Local authorities can conduct a review of support payments and they are only obliged to remunerate carers for two years. In some cases this has left carers worse off than if the child had remained “looked after” in their foster care. In England there have been reports that some local authorities are continuing to provide support, whilst others, on the basis of an assessment, are not.⁹⁷

7.2 Scotland

Scotland does not have SGOs. When the Adoption and Children (Scotland) Act 2007 came into force in September 2009, a legal order called a **Permanence Order** was introduced. This also enables a local authority to provide stability for a child who cannot return home, but for whom adoption is not realistic. The Permanence Order recognises that vulnerable children must have stability to develop attachments to their carers.⁹⁸ Those who are already foster or kinship carers become permanent carers for the child. However, unlike SGOs, the local authority takes on some of the parental responsibilities and rights, but these can also be shared with another person - such as a kinship carer.⁹⁹ Within the Order, the child also remains in the system as “looked after” by the local authority, but there is less statutory involvement. Research suggests that the uptake of these Orders has been relatively low.¹⁰⁰

7.3 Northern Ireland

SGOs are not available in Northern Ireland and no absolute equivalent exists.¹⁰¹ A Residence Order (RO) provides some of the features of a SGO, for example, by allowing the holder joint parental responsibility for the child whilst it is in force.¹⁰² The RO stipulates who the child will live with, and this is decided by the court. ROs may be granted, for example, to one parent (if the relationship with the other parent has broken down) or to another carer of the child. The key difference between an SGO and RO is that a special

http://www.barnardos.org.uk/fosteringandadoption/foster_adopt/fosteringandadoption_special_guardianship.htm

⁹⁵ DfE: Children Looked After by Local Authorities in England (including adoption and care leavers) - year ending 31 March 2011

⁹⁶ Gheera, M, (2012) House of Commons Library “Adoption and Kinship” p3. Research briefing for the author.

⁹⁷ Gillen, S. (2008) Foster carers should beware of getting councils out of their lives. Community care.co.uk

⁹⁸ Scottish Government Getting it right for every child in kinship and foster care strategy p18.

⁹⁹ Ibid

¹⁰⁰ Kidner, C (Jan 2012) SPICe Briefing Kinship care. The Scottish Parliament, 12/05p11.

¹⁰¹ Personal correspondence by the DHSSPS to the researcher. Response dated 9.1.12

¹⁰² Personal correspondence by the DHSSPS to the researcher. Response dated 9.1.12

guardian may exercise parental responsibility to the *exclusion* of all others with parental responsibility (apart from another special guardian). It is also worth noting that substantial legal costs can be incurred by carers pursuing a RO.

At the time that the *Care Matters* strategy was written, it was envisaged that SGOs would differ from Residence Orders in a number of ways namely:

- It is anticipated that birth parents will not be eligible to apply for a Special Guardianship Order, but that foster parents who have cared for a child for a year will be eligible to apply;
- The applicant acquires parental responsibility for the child, which can be exercised to the exclusion of others with parental responsibility;
- Courts may give leave for a child to be known by a new surname or to leave the UK for 3 months; and
- Importantly, children who qualified for leaving and aftercare support prior to a special guardianship order may continue to qualify for this advice, and regulations will prescribe the circumstances when the Trust will continue to provide financial support to the foster parents. This is intended to facilitate foster parents to continue to look after the child without suffering financial disadvantage as result of the Order.¹⁰³

In the Departmental briefing on the Adoption and Children Bill for the HSSPS Committee, one official highlighted how SGOs may work in relation to kinship:

*..when a grandmother is caring for her grandchild because her daughter/son is going through some difficulties, perhaps with drugs or alcohol, the Order would mean that the grandmother could become the Special Guardian and exercise that parental responsibility to the exclusion of her child. That will not be without a lot of intense emotion, and so forth, so it is not a panacea for every situation, but we hope that it adds to the flexibility of the Orders available and gives an increased sense of permanence for some children...*¹⁰⁴

Under proposals published for consultation in the context of a draft adoption strategy (Adopting the Future, 2006), the DHSSPS indicated its intention to introduce the equivalent of SGOs in Northern Ireland within the Children Order.¹⁰⁵ In response for information by the author on whether it is still the intention for SGOs to be introduced, the Department stated it **“intended to introduce an Adoption and Children Bill in the current mandate, which will include provision for the introduction of SGOs”**.¹⁰⁶

However, on further asking the Department if SGOs will include “looked after” as well as informal kinship arrangements (including children “in need”), they stated,

*We are currently reviewing all of the proposals contained within the Department's consultation document, Adopting the Future. **At this stage, policy officials have not***

¹⁰³ DHSSPS (2007) Care Matters, p51. Available online at: <http://www.dhsspsni.gov.uk/care-matters-ni-3.pdf>

¹⁰⁴ NI Assembly Official Report Committee for Health, Social Services and Public Safety, Adoption and Children Bill Departmental Briefing 16.11.2011 p.14.

¹⁰⁵ Personal correspondence by the DHSSPS to the researcher. Response dated 9.1.12

¹⁰⁶ Personal correspondence by the DHSSPS to the researcher. Response dated 9.1.12

agreed a definitive position on Special Guardianship Orders. Also at this stage, Ministerial approval for the full range of adoption proposals is outstanding. You will appreciate that we are not in a position to provide the detail requested until Ministerial approval has been obtained.

The Department also confirmed that it would be looking closely in the coming weeks at how SGOs are working in England in order to assess strengths and weakness, and to get a model that is appropriate for Northern Ireland.

8. Summary

The number of children living in kinship care is on the increase, and the majority of these arrangements are informal agreements between parents and relatives/friends. Kinship carers play a unique role in enabling children to remain with people that they know and trust. Yet, how a child arrives or is placed with family or friends is complex, and can determine the type of support a carer can access. Across the UK and in the Republic of Ireland, kinship care policies and practices - if available, differ, and have tended to focus on provision for "looked after" children in formal kinship care. Additional research is required to gauge a more accurate picture of the actual number of children living in kinship, the types of care arrangements, and how to best support those families.