

SPICe**The Information Centre**
An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**28th Meeting, 2023 (Session 6), Thursday,
09 November**

Kinship Care – Evidence session with the Minister for Children, Young People and Keeping the Promise

Introduction

The Committee will hold an evidence session with the Minister for Children, Young People and Keeping the Promise, Natalie Don MSP. This session follows on from the Committee's short inquiry into kinship care in 2022.

This SPICe paper sets out the findings of the Committee's previous work. It also looks at progress and remaining issues in the months that have followed. The [SPICe briefing for the 24 February 2022 meeting](#) provides detailed information about the issues facing kinship carers and relevant work being taken forward at national level.

Background

Kinship care arrangements

Kinship care is where a child who cannot be looked after by their parents is looked after by extended family or someone known to them.

When a local authority is placing a child with a kinship carer, under Section 10(3) of the **Looked After Children (Scotland) Regulations 2009**, they must undertake an assessment of the kinship carer's suitability to care for the child. The assessment of kinship care arrangements is undertaken by local social work teams. There is no statutory requirement for the review or re-approval of kinship carers, although some local authorities do have a process of assessment and/or kinship care panels in place.

Children living in kinship care are not always formally 'looked after' (i.e. where a local authority has some legal responsibility for the child). Children can live with kinship carers in informal or formal arrangements. The features of informal and formal kinship care are set out below.

Formal kinship care

The [Scottish Government's 2021 National Guidance for Child Protection](#) states that kinship care placements arranged under the Looked After Children (Scotland) Regulations 2009 are "often referred to as formal kinship care".

The 2009 regulations give local authorities powers to approve a kinship carer for a child looked after by a local authority under the terms set out in section 17(6) of the Children (Scotland) Act 1995. This section of the Act has been amended in recent years to include:

- Looked after children subject to [Compulsory Supervision Orders](#)
- The introduction of [Permanence Orders](#), which have the potential for parental rights to be shared between kinship carers, parents and the local authority. This was introduced under section 80 of the [Adoption and Children \(Scotland\) Act 2007](#).

Informal kinship care

Children in informal kinship care arrangements are not considered 'looked after' by a local authority. Their kinship care arrangement may have come about:

- Via the [Children and Young People \(Scotland\) Act 2014](#), which introduced the provision of 'kinship care orders'. This describes existing court orders made under [section 11 of the Children \(Scotland\) Act 1995](#) granting parental responsibilities and rights to a qualifying person or residence orders regulating where a child lives if the child was looked after previously.
 - **Once a kinship care order has been granted a child is no longer looked after** by a local authority. The 2014 Act sets out support local authorities should offer to eligible kinship carers who have or are seeking a kinship care order.
 - Not all carers with a kinship care order are eligible for financial support: if a child was not previously looked after or placed with local authority involvement, the carer will likely not receive a kinship care allowance from the local authority.
- Some children may be living in a completely private arrangement, with no involvement from the local authority, no court orders and no granting of guardianship. There is no legal requirement for the state to be notified of such an arrangement when a child is being cared for by a close relative (through blood, marriage or civil partnership). Informal kinship care differs from private fostering. Private fostering is where a parent makes an arrangement to have

their child cared for by someone who is not an approved foster or kinship carer, guardian of the child or close relative of the child.

During its inquiry the Committee heard from [Social Work Scotland](#) (SWS) and [CELCIS](#) that the use of the phrases ‘formal’ and ‘informal’ in relation to kinship care causes confusion and makes it difficult for kinship carers to understand how to secure the right support. This point was also made by other stakeholders in evidence to the Committee.

Number of children in kinship care

The latest [Scottish Government Children’s social work statistics](#) published in April 2023 found that:

- There were 4,249 children in formal kinship care in 2022; down from 4,410 the previous year and up from 4,076 in 2012.
- In 2022, looked after children in formal kinship care represented 34% of looked after children in Scotland.

The total figure is likely to be far higher, as these figures do not include children living in all informal kinship care. To illustrate this point, a [2017 policy report from the Hadley Centre for Adoption and Foster Care Studies at the University of Bristol](#) estimated 12,630 children in Scotland were living in some form of kinship care arrangement in 2011.

Scottish Recommended Allowance

In 2020, the [report of the Independent Care Review](#) set out a vision for Scotland where all children grow up loved, safe and respected. On kinship care, it concluded that: financial support for kinship carers should match that of foster carers; support must recognise trauma faced by children and their carers; carers should not have to fight for support or professionalise their role; and a balance of support and supervision for kinship carers must be ensured.

Progress toward the realisation of the care review recommendations by 2030 is now [overseen by The Promise Scotland](#). The [Scottish Government’s 2022 Promise Implementation Plan](#) undertook to set a Scottish Recommended Allowance for foster and kinship carers.

The Scottish Government announced on [29 August 2023](#) that there would be a new national allowance for foster and kinship carers. It is not clear whether local authorities have begun to implement this. The new rates, which will be backdated to 1 April 2023, are:

- 0 to 4 year-olds: £168.31
- 5 to 10 year-olds: £195.81
- 11 to 15 year-olds: £195.81
- 16-years-old and over: £268.41.

From last year's evidence sessions, which informed the Committee's report, CELCIS' submission highlighted a [2021 survey from the Fostering Network](#), which found significant differences in allowance rates between local authorities. The ranges were between:

- £77.96 to £200 per week for children aged 0-4
- £96.40 to £200 per week for children aged 5-10
- £120.00 to £240.40 per week for children aged 11 to 15
- £125.86 to £266.75 per week for children aged 16+.

Kinship Care Collaborative

The Kinship Care Collaborative was set up by the Scottish Government following a commitment in the [2020-21 Programme for Government](#) to better support kinship carers and resolve the variation in support received across the country.

The group is co-chaired by the Scottish Government and Social Work Scotland. Among its aims is to develop a network to deliver improvements at local and national level for kinship families. It will consider and take forward solutions to support children and young people living in kinship families and develop social work knowledge and practice of the issues faced by kinship families.

The Committee's previous work

Last year the Committee looked at the challenges faced by kinship carers, with a particular focus on available support and accessibility of available support.

The Committee carried out a short inquiry on kinship care in early 2022. Two evidence sessions were held; [one on 24 February 2022](#) with COSLA, CELCIS, Child Poverty Action Group in Scotland, Scottish Kinship Care Alliance, Perth and Kinross Council, and Social Work Scotland; and a [follow-up session on 31 March 2022](#) with the then-Minister for Children and Young People.

An informal focus group was held in private on 21 March 2022; [a note from this focus group](#) outlines the discussion.

The Committee [published a report on its findings](#) in September 2022. The Scottish Government [responded to the report](#) on 23 November 2022. [COSLA responded to the report](#) on 13 July 2023, the [Scottish Government provided a further update](#) in August 2023.

Theme 1: Information and guidance

The Promise and Getting It Right For Every Child (GIRFEC) both set out a vision of children and young people being able to access the right support to enable them to thrive. The Committee found many kinship carers do not believe that this is the reality for their families and that they experience significant difficulties in accessing the support they need.

The circumstances in which people become kinship carers can be deeply personal and challenging. The Committee heard examples of people becoming kinship carers after losing their own child. They faced the trauma of their child's death and then had difficulty accessing support from local authorities, Social Security Scotland and the Department for Work and Pensions.

The Committee heard that some kinship carers were unaware their arrangements were classed as 'informal', and that this had knock on impacts on their eligibility for support.

[The Committee's report](#) recommended that the Kinship Care Collaborative should review how information is provided to kinship carers and highlight best practice. This should ensure that new kinship carers are given clear and accessible information about how to access support and advice, their rights, legal arrangements underpinning kinship care arrangements and the impact of these arrangements on the support available.

The Committee also called on the Kinship Care Collaborative to clarify guidance around the definition of 'at risk' of being looked after, as they heard in evidence that some local authorities may have been using a narrow definition of this term.

[In its response, the Scottish Government](#) said that Social Security Scotland and the Kinship Care Advice Service for Scotland¹ developed a "learning package for all operational staff" on kinship care and the support available to kinship carers. The training is supplemented by guidance which is reviewed and updated regularly.

In addition, the [What Now? booklet](#) developed by the Kinship Care Advisory Service for Scotland (KCASS) Advisory Group was highlighted as a resource already available to kinship carers.

The [COSLA](#) and Scottish Government responses to the Committee report also said the Kinship Care Collaborative was looking at clarifying the guidance around the meaning of 'at risk'. The Scottish Government said this was being done "as a matter of urgency" and guidance required "significant changes to improve interpretation of the legislation". This work also involved looking at clarifications around 'formal' and 'informal' care and the legal status of a child, taking into account GIRFEC, UNCRC, legislative developments around protecting sibling relationships and the overall aims of The Promise.

While [COSLA's response to the Committee's report](#) stated local authorities regularly review websites to ensure information about support for kinship carers is available, [the Scottish Government said](#) data collected by the Kinship Care Collaborative suggested many local authorities did not have information on kinship care policies. At the time of the Scottish Government response in November 2022, a scoping exercise was being carried out to understand what information around legal, financial

¹ The Kinship Care Advice Service Scotland is funded by Scottish Government to provide services to Kinship Families and Practitioners across Scotland. This service has been hosted by Adoption UK Scotland (AUK) since 2020 alongside the Association for Fostering, Kinship and Adoption Scotland (AFKA) and supported by CPAG.

and non-financial support is currently available. Findings from this would inform the development of a strategy to improve “accessibility, clarity and consistency of information”.

Revised guidance with input from kinship carers, children and young people with experience of kinship care was initially planned for the autumn, but this has since been pushed back to the end of 2023. In its [August 2023 updated response to the Committee](#), the Scottish Government said development of the guidance was being taken forward by a ‘guidance rewrite group’ of Scottish Government officials, CELCIS, Social Work Scotland, local authority and the Scottish Local Authority Lawyers and Administrators (SOLAR), looking at the non-statutory Children and Young People (Scotland) Act 2014: National Guidance on Part 13: Support for kinship care.

A reference group with members from the Scottish Public Service Ombudsman, local authority frontline service managers and the Kinship Care Advice Service for Scotland had also been set up to “test alignment; check for coherence and accuracy; and ensure rights are demonstrated in the changes suggested by the rewrite group”.

The Scottish Government’s August 2023 response stated that, following recognition of the need for the development of a national assessment tool for assessing the needs of kinship carers, the Kinship Care Collaborative will form a working group of practitioners from eight local authorities to explore and develop this tool.

Theme 1: Information and guidance

Members may wish to explore with the Minister:

- 1. How work is progressing toward providing clear, accessible information for kinship carers about legal arrangements around kinship care and how they can access their rights, support and advice.**
- 2. How will updated information be shared with kinship carers – including carers at the start of their kinship care journey at the time children first come to live with them.**
- 3. What update can the Minister give on the work of the ‘guidance rewrite group’ and how updated guidance will be communicated with local authorities to ensure smooth implementation and a shared understanding of the definition of ‘at risk’.**

Theme 2: Financial support for Kinship Carers

[Evidence the Committee received from CELCIS](#) stated that children living in kinship care are “disproportionally living in the poorest households in Scotland”. Kinship carers interviewed for the Independent Care Review told of living in overcrowded housing in ‘abject poverty’. Many kinship carers are grandparents who may have already been facing financial difficulties, and many have had to give up employment when they become carers.

Local authorities have a duty to provide financial assistance to kinship carers of looked after children and to kinship carers with a kinship care order where the child was previously looked after or is at risk of being looked after. These are known as ‘formal kinship care’ arrangements. In these cases, [following an agreement in 2015](#), the financial assistance provided should match the rate paid to foster carers, not including any fee that foster carers may receive.

In ‘informal’ kinship care arrangements, local authorities have discretion to provide financial support. Support does not have to match the rate given to foster carers.

The [Scottish Government policy on kinship care](#) states that local authorities should publish a Kinship and Fostering Allowances Policy setting out eligibility, entitlement, how these will be assessed, where information can be found, where complaints can be made and any other relevant information.

The Committee previously heard that foster and kinship carers eligible for support received different rates of payments depending on their local authority area, and this caused difficulties in some cases. The Committee learned that in 2018, the National Review of Care Allowances recommended a Scottish Recommended Allowance for foster and kinship carers, ensuring carers in all areas of the country were paid the same rate.

In its report, the Committee recommended that the Scottish Government and COSLA addressed outstanding issues around the agreement of the Scottish Recommended Allowance and introduce it as soon as possible.

In the [Scottish Government’s November 2022 response](#), the Minister acknowledged that the introduction of the allowance had taken “far longer than originally anticipated”, in part due to the pandemic. [COSLA’s July 2023 response stated](#) “constructive discussions are ongoing, and progress is being made”, and any rate increase would need to be fully funded by the Scottish Government.

The Scottish Government announced in August 2023 the [introduction of the Scottish Recommended Allowance for foster and kinship carers](#):

“The introduction of the SRA provides a recommended allowance that all local authorities must pay as a minimum, although they can also choose to pay more. Where local authorities are already paying above the national minimum allowance, this will continue so that kinship or foster carers currently in receipt of the allowance will not be worse off because of this commitment.” – [Scottish Government News Release, 29/08/2023](#)

It is not clear whether local authorities have begun to implement the minimum rates. In [a letter to the Committee on 6 October 2023](#), COSLA stated it did not hold data on allowances currently being paid by local authorities.

In its [submission to the Committee on 25 October 2023, CELCIS](#) called for the Scottish Government to clarify which kinship carers are eligible for the Scottish Recommended Allowance to avoid a “postcode lottery” of support. CELCIS states it “understands that the eligibility criteria is contained in Regulation 33 of the Looked

After Children (Scotland) Regulations 2009” and Part 13 of the Children and Young People (Scotland) Act 2014 also provides for an allowance to be made to kinship carers. The submission states:

“Guidance from the Scottish Government will be published soon on Part 13 which should support the interpretation of ‘a kinship carer’ as it relates to the Scottish Recommended Allowance. This is, at present, a complex situation for kinship families to navigate, and so clarity within the Scottish Government guidance about which kinship carers are eligible for the Scottish Recommended Allowance will be welcomed.” – [CELSIS written submission to Committee, 25/10/23](#)

In [a submission to the Committee](#), Kinship Care Advice Service for Scotland (KCASS) stated the national allowance had been broadly welcomed by kinship carers, though they had not received further information from local authorities about when backdated payments will be made. In addition, kinship carers holding a Kinship Care Order and receiving allowance under the Kinship Care Assistance (Scotland) Order 2016 sought clarification as to whether “parity continues for these families”.

In relation to the levels of support, KCASS highlighted many carers with older children would not receive an increase under the new arrangements:

“Custom and practice in many Local Authorities has been that there was separation between age 5-10 and 11-15 age brackets with older children’s allowances being greater. For 29 of the 32 Local Authority areas, the combining of these brackets means Kinship Carers of children aged 11-15 will receive no increase and will stay on their current payment. This has been challenging to understand.” – [KCASS submission October 2023](#)

KCASS stated kinship carers and practitioners supporting them also wanted to know whether the allowance will be linked to inflation, how any uplifts will be calculated and if there would be any increases linked to the cost of living.

This issue was also highlighted in the [CPAG Scotland submission](#). CPAG Scotland stated that if the minimum allowance was not increased in line with inflation, kinship carers receiving child-related benefits would see their kinship care allowance reduced as social security benefits increased.

CPAG Scotland stated concern that local authorities paying over and above the new minimum allowance may freeze their rates, resulting in real terms cut for their kinship carers over time. CPAG Scotland also called for clarification on when the new minimum allowance would be received by kinship carers.

The [Scottish Kinship Care Alliance’s submission](#) to the Committee welcomed the end to the “postcode lottery” of allowance rates but said the decision to set the same rate for the 5-11 and 11-15 age groups was discriminatory toward the “most vulnerable age group 11–15-year-olds”.

The submission stated that 11–15-year-olds faced issues around identity, anger, violence at school, absconding and stigma, and teens in residential settings were

given far more financial support from the state. It also said that Scottish Kinship Care Alliance was not consulted on the rates, and that the group planned to hold a demonstration and lodge a petition as a result of this.

Benefits

During its enquiry, the Committee heard that kinship care arrangements affect entitlement to social security. This is a complex area and there are different entitlements for kinship carers of looked after and non-looked after children. In addition, receiving kinship care allowance impacts on entitlements to other social security benefits and tax credits.

Kinship carers of ‘looked after’ children are eligible for the Scottish Recommended Allowance. [Citizens Advice Scotland information](#) states that while the rules for kinship carers’ eligibility other benefits are “complicated”, some may be eligible for other benefits such as Housing Benefit, Child Tax Credit, [Best Start Grant](#), [Scottish Child Payment](#) and Child Benefit.

Kinship carers of ‘non-looked after’ children may be eligible for: Child Benefit; Child Tax Credit or the Child Element of Universal Credit if on a low income; Child addition in Pension Credit if over pension credit age and on a low income; [Best Start Grant](#) package of three payments to help parents and carers on low incomes with the costs of having a child in the family; and [Scottish Child Payment](#) for those on a low income caring for a child under six.

HM Revenue & Customs judges eligibility for Child Benefit, Child Tax Credit and Child addition in Pension Credit on where the child ‘regularly, usually, typically’ lives. This means if the child lives with the kinship carer for most of the week, they will likely be eligible for these benefits.

The Committee learned that the two-child limit impacts kinship carers of non-looked after children who receive the child element of Universal Credit. Alison Gillies of CPAG told the Committee there is “no specific exemption” for kinship carers, though some kinship carers are exempt.

Awareness of kinship carers, the issues they faced, and the benefits they are eligible for was highlighted as an area where progress was needed.

The Committee’s report urged the Scottish Government, UK Government and COSLA to ensure central and local government staff advising kinship carers on benefits or allowances are aware of the range of different kinship care arrangements and have access to clear, easy to follow guidance.

The Scottish Government’s response to the Committee highlighted training initiatives being taken at Social Security Scotland, as outlined earlier in this briefing. It also stated that while the Scottish Government has limited social security powers, the Minister had written to the UK Government requesting a review of kinship care training provided to Department for Work and Pensions (DWP) staff, and suggesting that staff should be made aware of differences between legislation in Scotland and England:

“...to ensure that kinship carers are able to access, with dignity and respect, the UK benefits they are entitled to.” – [Scottish Government response to Committee report](#)

The response also included a commitment that Scottish Government officials will keep in touch with UK Government counterparts around the recommendations from the English Independent Review of Children’s Social Care. This included a recommendation for new kinship carers to receive a period of paid leave matching that given to adopters. The Minister stated she had “urged” the UK Government to implement this as a means of enabling carers to stay in work during the period in which a child is settling in with them.

The Scottish Government highlighted changes introduced by the Social Security (Miscellaneous) Regulations 2022, which widen the definition of kinship care for Best Start Grant, Best Start Foods and Scottish Child Payment so that eligible kinship carers not related to the child are included.

The Regulations also extended the eligibility for the Scottish Child Payment to low-income families with children under 16, increased the value of the Scottish Child Payment to £25 per week per child and enabled Social Security Scotland to automatically pay Best Start Grant Early Years Payment and Best Start Grant School Age Payment to eligible people who are in receipt of Scottish Child Payment.

Theme 2: Financial support for Carers

Members may wish to explore with the Minister:

- 4. When will local authorities receive the £16m funding announced by the Scottish Government and how will this be distributed between local authorities to ensure all eligible kinship carers can receive support? Is the Minister confident the money allocated will be sufficient?**
- 5. What information does the Minister have regarding how many local authorities are delivering the minimum rate so far?**
- 6. Stakeholder groups have called for the Scottish Government to clarify which kinship carers are eligible for the Scottish Recommended Allowance. Can the Minister provide clarity on this?**
- 7. What lies behind the decision to keep the recommended allowance rate for 11–15-year-olds the same as the rate for 5–10-year-olds? KCASS stated that this has been “challenging to understand”.**
- 8. Will the recommended allowance rate be linked to inflation and/or the cost of living and how will uplifts be calculated.**
- 9. What more can be done for kinship carers who are not eligible for support?**
- 10. What updates can the Minister give regarding the recommendations of the English Independent Review of Children’s Social Care and whether**

progress has been made towards the introduction of paid leave for new kinship carers?

Theme 3: Related support needs

In its written submission to the Committee, CELCIS highlighted the challenge that caring for children who have experienced adversity in their lives. CELCIS stated kinship carers need information, advice and support in areas including attachment, trauma, child development, therapeutic family support and legal and financial advice.

The Committee heard in evidence that some kinship carers worried about seeking support due to fears about children being removed from their care. The Committee's report called for this culture of fear to be addressed by those supporting kinship carers.

Suitable housing was identified as another issue faced by kinship families, as was ensuring the children received relevant support at school.

The Committee's report called for clear guidance for local authorities about the holistic support that should be available to all kinship families, recognising that carers may need support to deal with the impact of their kinship care role on their wellbeing.

In its response to the Committee report, the Scottish Government said "we must collectively do what we can" to support kinship carers in line with The Promise and it was not acceptable for some to be worried about children being removed from their care if they sought support. [COSLA's July 2023 response](#) to the Committee stated that work to clarify guidance on holistic support was being taken forward as part of the update underway [through the work of the Kinship Care Collaborative]. The response stated:

"Family support (including kinship families) is a key focus for local authorities in line with the Promise, and in some areas use of Whole Family Wellbeing Funding is aiding this. Kinship carers are also eligible for a carers assessment and plan where they are caring for a child with additional needs." – [COSLA response to Committee report](#)

Theme 3: Related support needs

Members may wish to explore with the Minister:

11. How the Scottish Government and local authorities can ensure the related support needs of kinship carers can be met.

12. What more can be done to help reassure kinship carers that they will not have their children removed if they seek support.

Theme 4: The Kinship Care Collaborative and next steps

The Committee heard concerns and frustration from witnesses about the pace of progress around supporting kinship carers. There were also concerns around the transparency and communication of the Scottish Government's Kinship Care Collaborative.

Following the Committee's evidence sessions, the [Minister wrote to the Committee in June 2022](#) outlining the work of the Collaborative, though did not commit to a timescale for delivery. The Minister's letter set out three priority groups for the Collaborative's work:

- **Priority Group 1:** Review of kinship care legislation and guidance; Establish clear and universal understanding and definitions within legislation.
- **Priority Group 2:** Identification of resources and gaps with a view to eliminate any gaps; Identification of good practice.
- **Priority Group 3:** Improving consistency of service provision across Scotland: Ensuring kinship care is visible within communities and promoting this.

The Committee's report called for the Scottish Government to provide information about how the work of the Collaborative would be communicated and what the timescales for delivery are. The Scottish Government's response to the Committee report set out plans to communicate the Collaborative's work on the gov.scot website. While there is now a [page setting out the group's work](#), it is not clear how up to date this is.

The response said that a timeline on the Collaborative's work was "difficult to provide" but the Committee would be updated at key points. The Scottish Government said the Collaborative was moving into a "more action-orientated space", with discussion around this planned for the 13 December 2022 meeting.

Regarding involvement of kinship care groups, the Scottish Government said it was "keen to ensure that the voice of caregivers, and children and young people are heard", had met with the Kinship Care Alliance and encouraged other groups to get in touch. In addition to this, KCASS has established an advisory group of kinship carers, and their input is sought in the development of some training and resources.

In its 25 October 2023 submission to the Committee, CELCIS states that the Kinship Care Collaborative could play a "pivotal role in gathering intelligence as to how the Scottish Recommended Allowance is being implemented across Scotland, as well as supporting the feedback loop".

Theme 4: The Kinship Care Collaborative and next steps

Members may wish to explore with the Minister:

13. What can the Minister say about progress of the Collaborative in recent months?

14. What are the next steps for the Collaborative?

15. Stakeholders have suggested the Kinship Care Collaborative could have a role in gathering information about the rollout of the Scottish Recommended Allowance. What consideration has the Minister given to this?

Lynne Currie, Senior Researcher (Children's social work), SPICe Research

2 November 2023

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