



Submission to the Children and Families Act 2014 Committee call for evidence

April 2022

Introduction

Kinship care is when a child lives with a relative or friend who isn't their parent, usually because their parents aren't able to care for them as a result of parental drug or alcohol misuse, bereavement, imprisonment, parental abuse or neglect, or parental ill-health. Around half of kinship carers are grandparents, but many other relatives including older siblings, aunts, uncles, as well as family friends can also be kinship carers. There are over 150,000 children living in kinship care in England.

Our written evidence submission focuses on the impacts of the Children and Families Act 2014 on kinship care, and what changes should be made now to ensure an adequate statutory system of support for current and prospective kinship families. It is based on our extensive experience delivering programmes directly with and alongside kinship families for over twenty years as well as our own robust research and survey evidence, bolstered by references to other academic and research sources where relevant and appropriate.

Summary

- The absence of a coherent legislative framework for kinship care and the resultant lack of legal rights, entitlements and protections for children and their carers is the single most significant omission in children and families policy in England.
- Despite caring for children with very similar needs and experiences to those in care or who are adopted, kinship carers typically receive far less practical, emotional and financial support than foster carers or adopters, and their children are often ineligible for statutory support with their education and health needs.
- The Act's reforms to adoption and family justice – in particular the promotion of fostering-to-adopt and the 26-week limit for care proceedings – have resulted in practice which negatively impacts on the prevalence of kinship care, and experiences for children and families which are not in their best interests.
- A renewed focus is required by government to ensure the family justice and children's social care systems recognise and support kinship care as the primary option for children who are unable to live with their birth parents.

1. To what extent has the Act improved the situation for the most vulnerable children, young people and families in England? To the extent that it has not, is this because of the Act itself, its implementation, or challenges which subsequently emerged, whether lasting or temporary?

1.1. The Children and Families Act 2014 introduced a number of significant changes to adoption and contact, family justice and SEND which have, inadvertently or otherwise, impacted on the prevalence and practice of kinship care. These changes cannot be understood without acknowledging the intentions of and reforms brought about by other relevant pieces of existing or subsequent legislation, including the original Children Act 1989 or Adoption and Children Act 2002. In responding to the questions below we identify specific impacts the reforms of the Act have had on kinship care and the current situation for kinship carers and their children, particularly in relation to the Act's changes in policy and support for adoption.

2. If there were to be a Children and Families Act 2022, what should it include and what might be the barriers to implementation?

2.1. The absence of a coherent legislative framework for kinship care and the resultant lack of legal rights, entitlements and protections for children and their carers is the single most significant omission in children and families policy in England. Any new primary legislation would surely seek to rectify this and place significant emphasis on the transformative potential of sufficiently resourced kinship care options for children and families.

2.2. The marginalisation and lack of recognition by government towards kinship care has meant that it has been neglected, leaving many kinship carers bringing children up with little or no help from the state. The current system has developed in an ad hoc way over a number of years to create a fragmented and complex system which denies support to too many families on the basis of the child's legal status rather than their level of need.

2.3. The rationale for legislative change to improve policy and practice in kinship care is clear given its scale. There are estimated to be over 150,000 children in England growing up in kinship care¹ (although this is likely to be a significant underestimate), nearly double the number in local authority care². 3,800 children left care via a Special Guardianship Order in the year ending 31 March 2021; this figure has exceeded the numbers leaving care via adoption for the past three years.³

2.4. When compared to the care system, kinship care leads to better outcomes and greater stability for children; they often remain with the same carer, have enduring relationships with siblings and wider family, and have better physical and mental health and educational outcomes than children in local authority care.⁴

2.5. Kinship care offers a route to permanence, but unlike adoption, it does not completely break legal ties between the child and their parents. 96% of kinship carers who responded to

¹ Wijedasa, D. (2017) *Children growing up in the care of relatives in the UK*. Hadley Centre for Adoption and Foster Care Studies. University of Bristol. Policy Report 18.

² Department for Education (2021) *Children looked after in England including adoptions: 2020 to 2021*.

³ Ibid.

⁴ Wellard, S., Meakings, S., Farmer, E. and Hunt, J. (2017) *Growing Up in Kinship Care: Experiences as Adolescents and Outcomes in Young Adulthood*. London: Grandparents Plus.

Kinship's 2021 State of the Nation survey believed the children would be living with them permanently.⁵ A significant review of the evidence for special guardianship identified that this route has a low rate of disruption and offers much greater levels of stability for children than non-kinship foster care.⁶

- 2.6. However, these outcomes often come at great cost for kinship carers who are more likely than any other parenting group to be older, in poorer health, living in poverty and deprivation, living in insecure accommodation, and in low paid employment or unemployed.⁷
- 2.7. Despite this and the fact that most children and young people in kinship care have experienced similar adversities to children who are looked after or have been adopted (66% of children in all forms of kinship care have experienced abuse and/or neglect⁸), kinship families typically receive far less support. Carers are not eligible for support on a par with foster carers or adopters, and children are less likely to get the support available to those who are looked after or adopted. Where support is available, this is typically based on the legal status of the child and where they live; this legal and postcode lottery means families who often need the most support fail to receive it.
- 2.8. Kinship's 2021 financial allowances survey found that 82% of carers had worried about money over the previous year. Of those who did receive an allowance from the local authority, 76% reported that this was insufficient to meet the needs of the child.⁹ 64% of the 3500+ enquiries which Kinship's advice team dealt with in 2021 were about financial concerns.
- 2.9. In England, allowances for kinship carers are discretionary (apart from for the minority of kinship carers who are foster carers and who are entitled to the national minimum fostering allowance) and delivered by the local authority. There is a lack of transparency, consistency and fairness. Levels of financial support vary between and within local authority areas, and even within kinship families where a child's eligibility depends on their route into kinship care (i.e. if they were previously looked after). The system is riven with inequality and it is not based on the needs of children. As an alternative approach, New Zealand has made progress on introducing financial support for all kinship carers by delivering that financial support through the central social welfare system.¹⁰

2.10. *Recommendation: All kinship carers should be guaranteed a universal, non means tested allowance which matches the current national minimum fostering allowance until the child reaches age 18, as well as immediate support to help a child settle in.*

- 2.11. Kinship care isn't a choice; it is a reaction to circumstances. It commonly happens as a result of crisis with carers taking in children in urgent situations. As a result, carers often do not receive timely and appropriate advice and information to help them understand their rights, the different legal statuses, or what this means for them and the child. Kinship's annual survey in

⁵ Kinship (2021a) *State of the Nation Survey 2021*. London: Kinship.

⁶ Harwin, J., Simmonds, J., Broadhurst, K. and Brown, R. (2019) *Special Guardianship: A Review of the English Research Studies*. London: Nuffield Family Justice Observatory.

⁷ Wijedasa, D. (2015) *The prevalence and characteristics of children growing up with relatives in the UK: Characteristics of children living with relatives in England: Part I*. University of Bristol, Bristol.

⁸ Kinship (2021a).

⁹ Kinship (2021b) *Survey of Financial Allowances Received by Kinship Carers in England and Wales*. London: Kinship.

¹⁰ Gordon, L. (2017) Experiences of grandparents raising grandchildren in getting income support from work and income offices in New Zealand, Kōtuitui: *New Zealand Journal of Social Sciences Online*, 12:2, 134-145. DOI: 10.1080/1177083X.2017.1343194.

2019 found that 84% of respondents had not received the advice and information they needed when a child moved in and 72% believed they had never received good information and advice.¹¹

2.12. Kinship Navigator programmes, delivered at local level in the United States, are an example of how information and signposting can be provided to kinship carers, supporting them to navigate the different systems and get access to the support they need. Programmes have been found to support positive outcomes in safety, permanence and wellbeing, including low rates of re-entry into the child welfare system and cost savings for public services¹². Like within Kinship's own Kinship Connected service¹³, carers are helped not only to connect with support but empowered to access it. Both programmes also raise awareness of kinship care within local services so that carers are more likely to be signposted to support, and get a better response when they seek it.

2.13. *Recommendation: All kinship families should have access to independent information and advice, including free legal advice, from the point they are considering becoming kinship carers. Access to this information and advice should be available for as long as the family needs. The government's Family Hubs and Start for Life programmes must include kinship-aware service delivery with practitioners equipped with the knowledge and skills to support kinship families.*

2.14. Kinship carers need support from the earliest stage of their journey. This includes preparation and training for becoming a kinship carer, offering the tailored information kinship carers need that is different to foster carers or adopters. Kinship Ready is an example of a programme which provides a series of preparatory workshops for special guardians, developed and delivered by special guardians too in collaboration with social workers and academic researchers.¹⁴

2.15. Kinship carers also need practical and emotional support for both themselves as individuals and in supporting children with complex emotional and behavioural difficulties. Children growing up in kinship care need help to manage often difficult contact with their parents and to access and succeed in education, training and employment. Only those children in kinship care who were formerly in local authority care are eligible for support such as that through Pupil Premium Plus, the local authority Virtual School, and the Adoption Support Fund.

2.16. Kinship Connected is a tried and tested programme delivered by Kinship in England and Wales which helps local authorities improve outcomes for special guardians and other kinship carers. Experienced project workers (many kinship carers themselves) deliver one-to-one and peer support groups within the community. The programmes has helped to reduce carer isolation and financial concerns, and support improved wellbeing, relationships and confidence for kinship carers and their children. Independent evaluation has found that Kinship Connected generates a 20% return on investment for local authorities.¹⁵

¹¹ Grandparents Plus (2019) *State of the Nation Survey 2019*. London: Grandparents Plus.

¹² Casey Family Programs (2018) *Strategy Brief: Strong Families* [online]. Available at: https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF_Kinship-navigator-programs.pdf.

¹³ Kinship (no date) *Kinship Connected* [online]. Available at <https://kinship.org.uk/commission-our-services/kinship-connected/>.

¹⁴ Kinship (no date) *Kinship Ready* [online]. Available at <https://kinship.org.uk/commission-our-services/kinship-ready/>.

¹⁵ Starks, L and Whitley, J (2020) *An evaluation of Kinship Connected for Grandparents Plus: Final Report*. Starks Consulting Ltd with Ecorys. Available at <https://kinship.org.uk/wp-content/uploads/Kinship-Connected-Evaluation-FINAL-Sept-2020-1.pdf>.

2.17. *Recommendation: All kinship families should have access to the support they need, including health, education, and therapeutic support for the children, and preparation and training, practical, emotional and therapeutic support, peer support, and support with contact for the carers.*

2.18. Prioritising kinship care would also lead to significant savings for the public purse. Kinship's economic case for kinship care found that every 1000 reduction in the number of children in the care system would release £40 million which could be used to improve support for kinship carers and improve outcomes for children.¹⁶ Research for the Independent Review of Children's Social Care also highlights the long-term strategic benefit of early investment in support for kinship arrangements.¹⁷

3. Is the Act enabling faster, more secure and stable adoptions which are in the best interests of the child?

3.1. The Act's aim to streamline and speed up adoption illustrates the narrow focus of successive governments on adoption as the route to permanence for children who cannot live with their parents, at the expense of other forms of care such as kinship which offer permanence *and* maintain important links to the child's family network, consistent with their rights under the UN Convention of the Rights of the Child and the European Convention on Human Rights.

3.2. Although the number of adoptions have continued to fall dramatically following a peak in 2015¹⁸, partly as a result of increasing use of Special Guardianship Orders and Child Arrangements Orders (the latter reformed by the Act), the promotion of foster-to-adopt placements through the Act's reforms has impacted perversely on how we consider kinship care arrangements as a priority permanence option for children, especially in pre-birth contexts.

3.3. Our experience is that, too often, kinship (i.e. family and friends carer) options aren't fully or properly explored before foster-to-adopt arrangements are made. Whilst the Act requires local authorities to consider placing children with family or friend carers in the first instance and, if that is not appropriate, to then try to place children in foster-to-adopt arrangements with their prospective adopters, in practice the Act accelerates decision-making to the extent that kinship options are often poorly considered or missed.

3.4. This practice is unfair for children who can be denied an opportunity to grow up in the care of their wider family network and unfair for birth parents who could lose important connections with their child. It is also deeply unfair to foster carers who may be approved as foster-to-adopt carers, only to have children subsequently removed from their care and placed with a family member under a Special Guardianship Order given once a successful viability assessment has been completed much later.

¹⁶ Nicol Economics (2020) *Kinship Care: The Opportunity A Report by Nicol Economics for Grandparents Plus*. London: Grandparents Plus.

¹⁷ Alma Economics (2021) *Paying the Price. The social and financial cost of children's social care*. The Independent Review of Children's Social Care.

¹⁸ Department for Education (2021).

3.5. *Recommendation: More robust legislation and guidance is needed to ensure that all potential kinship carers are assessed before other options – including foster-to-adopt – are identified, particularly when a local authority says a baby cannot leave hospital with parents after birth.*

4. Have the reforms to the family justice system succeeded in making the system faster, simpler and less adversarial? How has the Act interacted with other reforms to the family justice system, for example the changes to legal aid?

4.1. The principle behind the 26-week limit for care proceedings – to limit harm to and uncertainty for children and families – continues to be welcome. It is in the child’s best interests to limit the duration of care proceedings where work to identify and assess kinship care options is completed pre-proceedings.

4.2. However, in too many instances, the impact of the 26-week limit has been to incentivise rushed and ineffective decision making, increasing the risk of placement breakdown and poor experiences for children and carers. Often, kinship carers are only identified towards the end of proceedings and assessments are rushed; a positive assessment for special guardianship may be made but parenting capacity and placements haven’t been sufficiently investigated.

4.3. In addition, there is insufficient information and time for kinship carers to appraise the child’s experiences and needs as they grow up, and for the local authority to ensure that an adequate support package is offered. Many kinship carers feel rushed into making a decision without adequate information and preparation; 95% of kinship carers in our 2019 annual survey said they’d had no preparation for the role¹⁹. Some report the threat that children will be taken away from the family for adoption or into care if they ask for support; this deficit model fails to begin with valuing families and asking what support they might need to provide the best possible environment for the child.

4.4. Commonly, in circumstances where the 26-week limit is set to be exceeded, our experience suggests the courts may make a care order which then requires the local authority to take the case back to court to rescind it once a placement proves stable, or the court makes a Special Guardianship Order with an attached Supervision Order (although this is becoming increasingly less common), or a Special Guardianship Order is granted and the special guardians are effectively abandoned to just ‘get on with it’. None of these options are in the best interests of the child or carer. The process needs sufficient time to complete the necessary assessments so the court can come to a properly informed conclusion.

4.5. *Recommendation: In order to ensure the 26-week limit delivers its intended aim to ensure safe, timely and good decisions for children and families, work should be completed pre-proceedings by children’s social care services to identify and assess all family members. This will ensure that kinship care options are available immediately should a child be removed at the first hearing, and minimises the damage done to the family and increases the likelihood of good decisions being made for the child.*

4.6. Kinship carers have no legal right to have a role in care proceedings; an order can be granted without them stepping foot into the court. This both denies prospective kinship carers an

¹⁹ Grandparents Plus (2019)

opportunity to contribute to life-changing decisions and to better understand and have access to important information about the child and their ability to safeguard and support their wellbeing.

- 4.7. There is a huge challenge for many kinship carers in managing ongoing contact and relationships within the family; this is typically different from the challenge for foster carers and adopters because kinship carers are often related. One of the positives of kinship care is that children can maintain relationships with their parents and wider family, but experiences in the family courts – which are frequently adversarial - can often cause significant tension and conflict between birth parents and family which impacts on their relationships and the child’s relationships long-term. Too many kinship carers are left picking up the pieces at the end and don’t have post-order support to navigate this or future family contact afterwards.
- 4.8. Kinship’s 2021 annual survey found that two-thirds of carers who needed support with contact did not receive it.²⁰ Many are left to cope with difficulties around parents frequently letting young people down, who are unreliable at keeping in touch, or who have lifestyles that expose young people to inappropriate or risky situations.²¹

4.9. *Recommendation: Kinship carers need legal rights, including the right to a role in legal proceedings where there is potential that they could become a kinship carer. The family justice system should recognise kinship carers in public care proceedings and seek to involve them in an accessible way, where appropriate. All kinship carers, birth parents and children should be offered support to manage contact to ensure good long-term relationships.*

4.10. There is a postcode lottery for kinship carers in relation to legal costs when obtaining a court order, especially those incurred in obtaining an order in private care proceedings. Some local authorities support kinship carers with all their legal fees and others offer no support at all. It can cost kinship carers an average of £5,446 to gain a court order for a child with many paying significantly more, with 40% of carers receiving no support to finance the legal application.²²

4.11. A lack of legal aid has material consequences for the experiences and outcomes for children. As a consequence, kinship carers are not supported to advocate for the long-term support they and their children need, such as through a robust and tailored support plan that is agreed when a special guardianship order is made.

4.12. *Recommendation: All kinship carers should have the right to legal aid, including for legal advice when they are considering becoming a kinship carer and covering post-order litigation where a parent takes carers back to court. The Ministry of Justice must expedite and build on plans set out in 2019 to expand the scope of legal aid to include SGOs in private family law²³ and introduce legal aid for all kinship carers taking long-term responsibility for raising someone else’s child.*

²⁰ Kinship (2021a).

²¹ Wellard et al (2017).

²² Ashley, C. and Braun, D. (2019) *The Highs and Lows of Kinship Care: Analysis of a Comprehensive Survey of Kinship Carers*. London: Family Rights Group.

²³ Ministry of Justice (2019) *Legal Support: The Way Ahead*.

5. Does the Children’s Commissioner have the correct remit and powers? Are the correct accountability structures in place to ensure they discharge their duties effectively?

- 5.1. According to the Act, the Children’s Commissioner must ‘*have particular regard*’ to the rights of certain groups of children, including those living away from home or receiving social care. Whilst some children growing up in kinship care such as those ‘looked after’ in kinship foster care are included in this group, it does not likely include most children growing up in kinship care – particularly those who are in informal family arrangements or who were not previously in care or do not receive ongoing support from the local authority.
- 5.2. However, the Act also supports the Commissioner to consider other groups of children who are ‘*at particular risk of having their rights infringed*’. Given the evidence of similar needs and experiences of adversity in childhood between children in kinship care and those in other social care groups, as well as evidence of poorer health, education and employment outcomes between children in kinship care and those in parental care²⁴, there is a clear rationale for all children in kinship care to be given appropriate consideration by the Children’s Commissioner in the discharge of the role’s primary function. They are more likely to face significant vulnerabilities and to benefit from a statutory body who can ensure their rights are upheld and their voices considered in government policymaking.

5.3. *Recommendation: All children growing up in kinship care should be acknowledged and explicitly included within the remit of the Children’s Commissioner for England as a specific group, including in the delivery of the office’s listening and research activity.*

6. Is the system of shared parental leave and statutory shared parental pay functioning adequately? Is the system of flexible working functioning adequately? In light of the changes to working styles brought about by the COVID-19 pandemic, what changes, if any, are needed to provisions in the Act on flexible working?

- 6.1. Unlike adoptive parents, kinship carers currently have no legal right to paid time off from work when they become kinship carers. Many find they have to negotiate unpaid time off from work at a time of emergency and high emotion especially as, unlike for adoptive parents, taking on the kinship care responsibilities is often unplanned and they have to rely on the good will of their employers.
- 6.2. Kinship’s 2017 Annual Survey showed that 85% of kinship carers were of working age and 73% were working prior to becoming a kinship carer. 45% of carers gave up work and 23% reduced their hours. 81% of those who gave up work said they did so to meet the needs of the children. 40% of carers were reliant on welfare payments as their main source of income and 50% were using their life savings to help raise the children.²⁵ The Parliamentary Taskforce on Kinship Care also highlighted that more than one in two kinship carers have to give up work or reduce their hours.²⁶

²⁴ Sacker, A., Lacey, R., Maughan, B. and Murray, E. (2021). *The lifelong health and wellbeing trajectories of people who have been in care*. London: Nuffield Foundation.

²⁵ Grandparents Plus (2017) *Kinship Care: State of the Nation 2017*. London: Grandparents Plus.

²⁶ Kinship Care Parliamentary Taskforce (2020) *First Thought Not Afterthought: Report of the Parliamentary Taskforce on Kinship Care*. September 2020.

6.3. It is better for carers, for their children and for the economy, that employment opportunities remain open following the change in family circumstances. Currently, the lack of statutory entitlement to paid leave from employment exacerbates carers' already disadvantaged socioeconomic position, plunging more families into poverty with significant detrimental impacts for children's life chances. This is a significant equalities issue too; the majority of kinship carers are older women.²⁷ As the retirement age for women has risen, increasing numbers of kinship carers are of working age. They are being forced to leave employment earlier than they had planned with devastating impacts on their income into old age.

6.4. *Recommendation: All kinship carers should have a statutory right to paid leave from employment, on a par with adoption leave.*

About Kinship

Kinship is the leading kinship care charity in England and Wales. We offer kinship carers financial, legal, practical, and emotional support and understanding from the moment they need it, for as long as they need it. Our expert advice, information, and guidance help with complicated and stressful decisions that so many kinship families must make. We are always there to support them through difficult times and celebrate the good.

Kinship carers are strong and determined. Together, they are powerful. We help them build communities of support and action by connecting families locally and across England and Wales. We are at the heart of kinship networks, partnering with and influencing service providers, local and national government, and other organisations.

We communicate directly with 8,000 kinship carers and 1,000 kinship care professionals. In 2020-21, our advice service advised 3,500 kinship carers. In 2022 we are rolling out a new national peer support service, funded by the Department for Education, which will support kinship carers in every local authority in England.

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²⁷ Kinship (2021a).