

#TimeToDefine #KinshipCare

Proposal from Family Rights Group for a clear and simple legal framework for kinship care

April 2022

01

A clear, definition of kinship care and kinship care arrangements set out on the face of primary legislation

(i) Global definition of kinship care

A simple, clear to understand, definition of kinship care written into primary legislation would help address the challenge of kinship care not being perceived and kinship care not being properly understood. It would cut through the present confusion resulting from different interpretations of kinship care being used in different areas of national and local government policymaking.

This single definition of kinship care would be applied across government to inform policymaking in respect of kinship carers. In getting this right, it will be important to learn from the process of developing other cross departmental definitions – for example, domestic abuse.

By being written into primary legislation, the definition would apply for the purposes of that specific legislation but also be expected to be adopted more generally, for example by local authorities, public agencies and frontline practitioners within and across a range of fields.

Family Rights Group would be happy to facilitate work on devising the exact form of words for this definition.

NB. This proposal is different to proposals for a single 'kinship care order'.

(ii) Types of kinship care arrangements which fall within the definition (about identifying the type of kinship carer)

Primary legislation should also define those specific forms of kinship care arrangement which fall within the scope of the definition. In the same way that someone can identify as a parent and within that as a mother, father, stepparent etc. This would help carers to identify themselves as kinship carers and for public services to recognise them as such.

This would require clearly setting out what it means to raise a child under each of the following existing arrangements:

- a. **Private family arrangement:** A close relative raises a child without prior consideration by the Family Court or children's services. Close relatives being a grandparents, brother, sisters, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership, or step-parent (aligning with the definition of relative under section 105 of the Children Act 1989)
- b. **Private fostering arrangement:** Someone who is neither a close relative nor an approved foster carer (and who is not a parent or other person who holds parental responsibility for the child), raises a child who is under the age of 16 years for 28 days as per the definition in section 66 of the Children Act 1989
- c. **Child arrangements order:** Someone who is not a parent but is a relative or friend is raising the child under a 'lives with' child arrangements order
- d. **Special guardianship order:** Someone who is a relative, friend or other person connected with the child is raising them under a special guardianship order
- e. **Kinship foster care:** When someone who is a relative, friend or other person connected with the child and is approved as a foster carer for the child and is raising them either under a care order (interim or final) or under a voluntary arrangement under section 20 Children Act 1989. The child is a looked after child
- f. **Adoption:** A relative or friend who has become the adopted parent for the child¹

¹ Adoption is rarely a route for kinship care situations given it severs the legal link between the child and their birth family

02

Passporting to support where falling within the statutory definitions



Meeting the global definition of kinship care and being identifiable as a kinship carer in the guise of one of those specified arrangements, would then serve as a passport to specific services and support. Regulations would set out what those services and support are AND what the evidence is for accessing them.

Individual types of arrangement would then come with additional entitlements above this minimum, where provided for in the legal framework already – for example, special guardianship orders and the associated financial allowances.

03

Specific eligibility for passporting to support and the required evidence

Kinship care arrangement	Eligibility for passporting to support and services	Example evidence required to 'prove' kinship care arrangement/ that individual is a kinship carer
<p>Child arrangements order</p>	<p>Having an order would be the only pre-requisite for accessing the services/ support below</p> <p>Additional discretionary support arising from having a child arrangements order – namely payment of child arrangements order allowance under paragraph 15 of schedule 1 Children Act 1989 - would still be available</p>	<p>Sealed copy of the court order</p> <p>Evidence from the local authority that they are supporting the person to become a kinship carer and secure a court order. Or that an order has been made albeit is not yet available</p> <p>A copy of an issued court application in their name (as a further way to account for a scenario where a court order has been made but is not yet available)</p>
<p>Special guardianship order</p>	<p>Having an order would be the only pre-requisite for accessing the services/support below</p> <p>Additional services and support would be available under the special guardianship legal framework</p>	<p>Sealed copy of the court order</p>
<p>Kinship foster care</p>	<p>A court or local authority care plan being in place pursuant to which the child is living with the carer</p>	<p>Care plan or placement agreement (in case of voluntary arrangement)</p> <p>Sealed interim or final care order</p>
<p>Private fostering arrangement</p>	<p>Meets definition of private fostering (note that private fostering by definition involves the child being in the care of the kinship carer for at least 28 days)</p>	<p>See below</p>
<p>Private family arrangement</p>	<p>Meets definition of private family arrangement AND child has been cared for by the kinship carer for more than 28 days²</p>	<p>Note on evidencing an informal caring arrangement be that a private fostering arrangement or a private family arrangement.</p> <p>For the two child tax credit exemption, claimants are required to provide supporting documents from a local authority social worker using the IC1 support for a child who is informally living with you form</p> <p>Other options that could be used to demonstrate the child is living with the kinship carer could be:</p> <ul style="list-style-type: none"> ○ A letter from prison authorities that the child's parent is unable to care for the child ○ Evidence from the claimant that they are receiving Guardian's Allowance for the child ○ Evidence from the claimant that they have started receiving child benefit for the child ○ A letter from a social worker, medical, housing, educational or early years professional to confirm that child is now living with the kinship carer (this could be the GP, college or school).

² If narrowing the scope of this group is required for financial support purposes, then an additional qualification of 'would otherwise be looked after by the local authority' could be added.

We would propose that the **minimum** level of support would include ensuring parity with looked after children and their carers on the following forms of support:³

i.

Priority school admissions

vi.

Counselling and therapeutic support (including bereavement support)

ii.

Pupil Premium Plus

vii.

Assistance with managing contact and family relationships

iii.

Free childcare for 2-year-olds

viii.

Help with children's emotional and behavioural needs

iv.

A designated member of school staff to promote educational achievement

ix.

Life story work

v.

Access to the Adoption Support Fund

x.

Access to courses to support preparation and on-going parenting to meet the needs of the children

³

The position of children placed in overseas kinship care arrangements requires consideration. Local authorities should be required to have regard to the level of support that would have been available to a domestic placement when:

- i) formulating appropriate plans for children for whom overseas arrangements are proposed; and
- ii) collaborating with overseas state services to understand and ensure appropriate support and services are in place for both reception and to meet longer-term needs.

Further, we propose the inclusion of the following further provision for kinship care(rs) as a **minimum**:

- i.** Paid employment leave akin to adoption leave

- ii.** Access to support from a local specialist kinship care support team

- iii.** Access to free, independent legal specialist advice and advocacy for kinship carers⁴

- iv.** Access to local support groups for kinship carers and for children raised in kinship care households

- v.** Access to a local family group conference service and mediation services, so families can take the lead in addressing concerns that may arise, for example in relation to contact arrangements

- vi.** A requirement in primary legislation for a designated lead in the local authority with responsibility for kinship care

- vii.** That each local authority's published local family and friends care sets out what support is available to all kinship care households

- viii.** A right to a local authority assessment for support, if requested

- ix.** Exemption from the benefit cap for kinship care households

- x.** The under-occupation penalty (bedroom tax) does not apply to kinship carer households so that children whose lives have been disrupted are not required to share a bedroom with another child in the household

- xi.** That no kinship carer, who has to move onto universal credit as a result of taking on the care of a kinship child, even as a temporary measure, is financially penalised

- xii.** That no kinship carer household is financially penalised as a result of kinship carers of pension age transferring from child tax credit to pension credit.

⁴ With legal aid reform required to bring about such change



04

A national financial allowance for all kinship carers who are raising children who would otherwise be in the care system

The cost of bringing up a child is substantial, including food, clothes, travel, household bills, outings and more. Foster carers raising looked after children are entitled to a financial allowance. How much foster carers receive depends upon a range of factors, but there is a national minimum fostering allowance that applies in England and local authorities must pay at least this. In contrast, there is no minimum national allowance for kinship carers who are raising a child who is not in the care system. There is significant variation as to whether, and how much, those kinship carers receive in financial support from their local authority, leading to many falling into severe financial hardship. To address this, as a first step, we propose that a **non-means tested, national financial allowance is introduced for all kinship carers who are raising children who would otherwise be looked after in the care system**.⁵ Such an allowance would align with the same minimum rates as fostering allowances and would be payable until the child reaches 18.

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An existing measure of 'would otherwise be looked after in the care system' was established in relation to the two-child tax credit.