

***Guidance relating to support
and payments for Kinship
Carers who transfer their
residence to another Council
or where a Council places a
child in another Council Area***

There are many complexities in relation to kinship care placements, practical and emotional support to the placement and financial support.

It is acknowledged that currently there is no consistency across Scotland in relation to when children living with kinship carers should become “looked after” and their carers formally approved, what level of payment is appropriate, when carers are encouraged to seek a court order to secure the child’s care with them, what ongoing support role does the local authority have when the private law order is granted and when might the local authority seek a Permanence Order for the child and share responsibilities with the kinship carer.

Councils use a number of different legislative bases for providing resources to kinship carers and the level of support both practical and financial will also vary. This means that any transfer across Council boundaries is likely to have the added complications for the carer that the support they are receiving may not be replicated in the second authority.

This paper considers the range of circumstances where transfer is proposed and provides guidance about where responsibilities for the child and carer should lie.

The goal of this guidance is to achieve as much consistency as possible though the detail of support will vary across Councils. Councils may wish to check certain aspects of procedure with their Council solicitors so that any issues of particularly ordinary residence can be clarified.

It would be beneficial if all Councils adhered to the guidance about the actual transfer parameters but also recognise with carers that there can be no universal approach to the level of allowances and support that a kinship carer may receive on moving Council areas.

ADSW would want to highlight that planning for greater stability for looked after children in kinship care should be the goal whatever the underpinning legal status of the child. Over time there may be a reduction in the number of kinship care arrangements where there is statutory intervention in the life of the kinship care family unless it is necessary for the protection of the child.

An agreed set of principles relating to support and financial help to kinship carers would help to achieve better consistency across Councils.

The F&A Committee agreed the principles set out below and that they should guide decisions but acknowledged that there could be no prescriptive solution to resolve all the issues.

Key Principles

The best interests of the child and his/her need for safe and stable care should be the priority in making decisions.

Where the placement is meeting the needs of the child and providing stability, then the best way to support that placement should be the key driver for decisions by the two Councils about ongoing support and financing.

Councils and kinship carers need to discuss the best legal route to achieve greater stability for any child placed with kinship carers.

Recognising that many kinship carers live near the poverty level, even with some financial support for the child, any disruption to payments should be avoided.

Income maintenance is not the responsibility of local authorities so every effort should be made to ensure that kinship carers receive all the available universal benefits for themselves and the child.

For a looked after child, there should be regular reviews about the needs of the child, the support the carers require and consideration of the most appropriate legal basis for the child's care. Continuing looked after status should be associated with the level of protection that is assessed as necessary to safeguard the child not as the route to secure financial assistance in terms of allowances from a Council.

It is fully recognised that the financial pressures on Councils are intense and each Council has been required to manage that pressure and provide allowances and /or support for kinship carers that are affordable for their Council. It is unrealistic to expect that a carer who moves Council areas will necessarily receive the same level of allowances from a different Council.

The CLAS statistics show that there is a rising number of children with looked after status living with in community placements usually with approved kinship carers. From 1996 to 2010, numbers rose from 1912 to 3223. For 2011 the figure is 3963. These figures do not include the many children supported by Councils across Scotland where the child is not looked after but may be subject to a S11 order giving custody to the kinship carer or cared for informally. The only estimates available of the number of those children was published some years ago and then was nearly 8000.

Proposals for transfer arrangements

1. A kinship carer is informally supported by authority A but the child is not subject to statutory intervention and kinship carers are not approved carers. Authority A makes occasional payments to support the carers through Section 22. The kinship carer and child move to Authority B.

As the child did not have looked after status and the kinship carers were not approved carers, responsibilities for future support should come from Authority B. Authority A should advise Authority B of the move and the support that had been in place- if the kinship carers agree to their details being passed to the new Authority. Authority B would make their own assessment of need and there would be no residual responsibility on authority A. If the carer required ongoing support Authority B would be expected to decide what level of support they can provide based on the child's needs.

2. A child looked after in terms of S25 and carers have been approved as kinship carers, have been receiving an allowance for the child and decide to move to another Council area.

Discussions with the carers should take place and if the carers intend to care for the child throughout their childhood then consideration of the appropriateness of the kinship carers applying for a Residence Order should be discussed before the move if possible. If no residence order is planned then the child would remain looked after and the responsibility of the original authority would continue for allowances and support, although negotiation with the new Council may be appropriate for support to be provided locally by them.

If a Residence Order is granted then the first authority should remain responsible for any Residence Order payments but would usually request that support for the placement is undertaken by the second authority. This would mirror the provisions where an adoption allowance is being paid. Where the distance from the first authority is not great then continued support by the first Authority may be agreed.

3. A child is subject to a supervision requirement with named residence with approved kinship carers. The first authority is paying allowances to the carers in line with their agreed levels of financial support.

Where carers move authority, then the first authority would request a review of the child's situation at a Children's Hearing and would discuss the transfer of the child's care, carers' support and responsibility for payments with the new authority. If the Children's Hearing agree the transfer then

it would be appropriate on transfer for all responsibilities to move to the second authority. At the point of transfer the receiving authority will assess the financial situation and place the carers as appropriate on their scheme of payments. The receiving authority cannot be bound by the level of payments that the first authority was making and will require to assess the level of support they will provide.

It may be appropriate to suggest a period in which the transfer should be achieved- 6 months may be a realistic goal.

4. Where a child is subject to a Residence Order with kinship carers and payments are in place

We would suggest that the arrangements should mirror those for Adoption Allowances – with ongoing payments being made by the first authority and support, as required, and placement review negotiated with the second authority. It will be important to ensure that local support is in place and that future reviews of placement support are carried out by the authority providing support as well as full discussion with the authority which continues to make payments.

5. A child is subject to a PO with approved kinship carers.

Full discussion on the application of the conditions contained in the PO will need to be examined. The most likely scenario will be for the authority holding parental rights and responsibilities along with the carers to continue to make payments but to arrange for support and review to be undertaken locally. For children subject to Permanence Orders the timing and frequency of reviews can be more flexible than for other orders.

6. Authority A arranges to place a looked after child with kinship carers who live in Authority B.

Authority A would be responsible for financing the placement of the child with the carers though support could be negotiated with Authority B if appropriate.

7. The kinship carer and child/ren are moving to England or Wales.

This section needs some detailed legal input to ensure Authorities have clear guidance on the responsibilities on carers and councils when cross border issues are present

Issues of ordinary residence will arise and legal advice will be required to ensure that support for the carers and the child does not fall between two agencies to the detriment of the child. The overall good practice guidance would be that the first authority should continue support for a period till new arrangements are agreed.

Where the child is subject to a supervision requirement, then the local authority would open discussions with the appropriate local authority in the country to which the carer is moving. The local authority will require to discuss with the Children's Hearing what appropriate orders may be available in the second authority and whether that authority is willing to accept the transfer.

There may be situations where the kinship carers are advised to seek a Special Guardianship Order and negotiations between the Scottish Authority and the receiving authority should be set in motion and agreements on the respective responsibilities for the long term support of the child reached.

Where the child is subject to a Residence Order and Residence allowances are in place, then the original authority should continue financial support but request support for the kinship carers and child locally.

There will continue to be dilemmas posed by the variety of kinship care arrangements but this guidance provides the basis for full discussion when transfers are being considered.

Prepared for the ADSW Fostering and Adoption Committee by Anne Black / Janet Smith
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