

**Coping with
complexity:**
financial support
for kinship carers
in Scotland

Alison Gillies

June 2015

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Published by CPAG
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Cover design by Colorido Studios
Cover photo by John Phillips/Photofusion
Internal design by Devious Designs
Printed by Calverts Press

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Acknowledgements

Grateful thanks are due to John Dickie, director of CPAG in Scotland and Lindsay Judge, senior policy and research officer at CPAG, for their suggestions and support, and to Henri Krishna, welfare rights worker at CPAG in Scotland for his careful checking of the calculations. Thanks also to Gill Westwood, kinship care coordinator at Citizen's Advice Scotland, for providing both information and support. Many thanks to Kevin Pilkington of Strathclyde University who provided guidance on the research which formed the basis of this report.

Key findings

Kinship carers – family or friends who take on the full-time care of a child when the child’s parents are unable to do so – have been the focus of significant policy and legislative attention over the past seven years since the concordat between the Scottish government and the Convention of Scottish Local Authorities (COSLA) committed to providing improved financial support for kinship carers of ‘looked-after’ children. CPAG in Scotland’s interest in this issue is two-fold.

- ◆ Firstly, existing research tells us that children in kinship care and their carers are disproportionately more likely to be living in poverty.
- ◆ Secondly, we have been able to use our expertise in social security matters to inform and analyse the tortuous interactions between devolved sources of financial support – kinship carer allowances paid by local authorities – and the UK benefits system, and we believe there are lessons to be learned from the experiences of both kinship carers and local authorities, particularly in the context of proposals for further devolution of ‘welfare’ powers.

This report takes stock of how the concordat commitment has impacted on Scottish kinship carers and the children for whom they care, and considers some of the challenges that lie ahead. It makes the following key findings.

- ◆ ‘Kinship care’ is increasingly used by local authorities as the preferred first option where children are unable to remain with their parents.
- ◆ In spite of the 2008 concordat agreement that Scottish local authorities and the Scottish government would each do what was required to provide ‘allowances for kinship carers of “looked-after children” to treat them on an equivalent basis to foster carers’,¹ financial support to kinship carers of looked-after children remains hugely variable across the 32 local authorities and frequently falls far short of the support offered to foster carers.
- ◆ Kinship carers, and the children for whom they care, are disproportionately likely to experience material deprivation. This may be due to pre-existing factors, such as age or ill health, or it may be due to changes necessitated by becoming a kinship carer, such as having to give up employment or reduce working hours.
- ◆ There is a dearth of research into the impact of financial support on kinship care arrangements. However, the research that does exist indicates strongly – and not surprisingly – that financial support is hugely appreciated and results in kinship care arrangements being more likely to succeed and thrive.
- ◆ Kinship care ‘allowances’ paid by the 32 Scottish local authorities interact with UK-wide benefits in ways which are both complex and, at times, counter-intuitive. This was not fully appreciated when COSLA and the Scottish government signed up to the concordat and

has resulted in some very unhelpful outcomes for kinship carers, including the possibility of children in kinship care being at risk of poverty despite the local authority paying an allowance.

- ◆ The eventual introduction across the UK of universal credit poses new challenges for kinship carers and local authorities. While universal credit will sweep away many of the existing complexities that exist in the interaction between kinship care allowances and the UK benefits system, the simplified situation may be punitive for many kinship carers and will have significant implications for local authorities wishing to support kinship carers of looked-after children to an adequate level. If local authorities fail to rise to this challenge, kinship carers of looked-after children, and the children for whom they care, may be at greater risk of poverty.

Notes

- 1 Scottish Government and COSLA, *Concordat between the Scottish Government and local government*, 14 November 2007, p5, available at www.gov.scot/Publications/2007/11/13092240/concordat

Introduction

What is kinship care?

We use the term ‘kinship care’ to describe the situation in which family or friends take on the full-time care of a child on a permanent or semi-permanent basis. Some kinship carers are caring for children who are ‘looked after’ by the local authority, which means that the local authority has enhanced responsibilities in relation to safeguarding their welfare.¹ The distinction between this group of kinship carers and those who are caring for children who are not ‘looked after’ is important in terms of the level of support a kinship carer may receive from the local authority.

Recent Scottish developments

The past seven years have witnessed significant changes in the support for, and assessment of, some kinship carers, particularly those caring for looked-after children. These changes were heralded by the 2007 concordat between the Scottish government and the Convention of Scottish Local Authorities (COSLA), which committed both parties to do what was required to provide ‘allowances for kinship carers of “looked-after children” to treat them on an equivalent basis to foster carers’.²

Prior to the concordat, there was growing awareness of, and dissatisfaction with, the variable financial support offered to kinship carers. This developed alongside the recognition that kinship care was increasingly relied on where children could no longer live with their parents³ and, if feasible, that it ought to be the first option for alternative care. By 2007, the Scottish government’s stated strategy was that ‘unless there are clear reasons why placement within the family would not be in the child’s best interests, care within the wider family and community circle will be the first option for the child’.⁴

This report considers the post-concordat developments in financial support for kinship carers in Scotland, reviewing what the existing research reveals about the outcomes for children who are living with kinship carers and how these outcomes may be influenced by the nature and extent of financial support. We then focus on developments since the concordat by providing an analysis of current local authority financial support to kinship carers and an assessment of imminent changes in both the Scottish and UK legal contexts.

Notes

- 1 s17 Children (Scotland) Act 1995; Scottish Government, *Guidance on the Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007*, March 2011
- 2 Scottish Government and COSLA, *Concordat between the Scottish Government and local government*, 14 November 2007, p5, available at www.gov.scot/Publications/2007/11/13092240/concordat
- 3 J Aldgate and M McIntosh, *Looking After the Family: a study of children looked after in kinship care in Scotland*, Social Work Inspection Agency, 2006
- 4 Scottish Government, *Getting it right for every child in kinship and foster care*, 2007, p3

Who are kinship carers?

There is no doubt that over the past two decades there has been a significant increase in the use of kinship care as an option for children who are unable to remain with their parents. In the mid-1990s around 8 per cent of all looked-after children were in kinship care settings. A decade later, this proportion had risen to around 15 per cent, and by 2013 more than a quarter of all looked-after children in Scotland, approximately 4,193, were living in kinship care arrangements.¹

Of course, these figures only relate to looked-after children and therefore do not reflect the true numbers of children living in kinship care settings. Analysis of the 2001 Census records reveals that, in 2001, 9,800 'relative carers' were caring for 15,400 children in Scotland.² This compares with 1,195 children looked after by the local authority and living in kinship care in 2001 – less than 8 per cent of the total.³ It seems safe to assume that the number of children currently living in kinship care arrangements is significantly greater than the number indicated in the looked-after statistics.

While kinship carers clearly do not form a homogeneous group, it is possible from the existing research to make certain observations about their demographics. Aldgate and McIntosh's 2006 Scottish study looked at 30 children and their 24 kinship carers across five different Scottish local authorities.⁴ The majority of carers were grandparents, the remainder being great-grandparents, aunts or friends. Most of the carers were in their 50s or older and almost half of the households had no earned income, surviving on state benefits and/or pensions.

The 2001 Census data revealed that a disproportionate number of Scottish kinship carers (of both looked-after and non-looked-after children) and the children they cared for lived in disadvantaged areas, 45 per cent of children in kinship care living in the poorest 20 per cent of areas, with 27 per cent of kinship carers being on benefits or unemployed.⁵

These findings chime with English-based research. Broad, Hayes and Rushforth in their study of 50 young people who were in, or had been in, kinship care found that kinship carers tended to be older, poorer and more likely to experience ill health than unrelated foster carers.⁶ Farmer and Moyers' comparative study considered the experiences of 270 children looked after across four English local authorities, around half of whom were in kinship care and the other half living with unrelated foster carers.⁷ The study found that kinship carers were more likely to be older, be in poor health and be experiencing financial hardship than unrelated foster carers. Overall, kinship carers were 'significantly more disadvantaged'.⁸

Selwyn, Farmer, Meakings and Vaisey's study of informal kinship care across the UK found that carers overwhelmingly reported a significant increase in expenditure on becoming a kinship carer, with 69 per cent reporting that they were unable to afford all basic expenditure.⁹ These findings are echoed in Hunt and Waterhouse's analysis of the interaction between support, need and legal status in kinship care, with 79 per cent

of carers reporting that becoming a carer had led to financial difficulties.¹⁰ A recent consultation involving around 250 kinship carers in Scotland found that 43 per cent had had to give up paid employment after becoming a kinship carer, with adverse financial consequences.¹¹

The likelihood that kinship carers will experience material deprivation has wide-ranging implications for the children for whom they care in relation to attainment in education, future employment, health and life expectancy. In light of the fact that social work services are disproportionately focused on people experiencing deprivation, it also increases the probability of continued contact with them.¹²

Notes

- 1 Scottish Government, *Children's Social Work Statistics Scotland*, 2014
- 2 S Nandy, J Selwyn, E Farmer and P Vasey, *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*, Bristol University, 2011
- 3 Scottish Government, *Children's social work statistics 2011–12*, table 2.2
- 4 J Aldgate and M McIntosh, *Looking After the Family: a study of children looked after in kinship care in Scotland*, Social Work Inspection Agency, 2006
- 5 S Nandy, J Selwyn, E Farmer and P Vasey, *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*, Bristol University, 2011
- 6 B Broad, R Hayes and C Rushforth, *Kith and Kin: kinship care for vulnerable young people*, National Children's Bureau, 2001
- 7 E Farmer and S Moyers, *Kinship Care: fostering effective family and friends placements*, Jessica Kingsley, 2008
- 8 E Farmer and S Moyers, *Kinship Care: fostering effective family and friends placements*, Jessica Kingsley, 2008, p32
- 9 J Selwyn, E Farmer, S Meakings and P Vaisey, *The Poor Relations: children and informal kinship carers speak out*, University of Bristol, 2013
- 10 J Hunt and S Waterhouse, *It's Just Not Fair! Support, need and legal status in family and friends care*, Family Rights Group, 2013
- 11 Children 1st, *Financial Review for Kinship Carers: a consultation with Scotland's kinship carers 2013*, 2013, available at www.children1st.org.uk/what-we-do/our-services/search-our-services/kinship-care/engagement-helping-kinship-carers-have-a-voice/
- 12 M McPhail, 'Children and Young People, Social Work and Scotland' in G Mooney, T Sweeney and A Law (eds), *Social care, health and welfare in contemporary Scotland*, Kynoch and Blaney, 2006; P Gregg, 'Childhood Poverty and Life Chances' in J Strelitz and R Lister (eds), *Why Money Matters: family income, poverty and children's lives*, Save the Children, 2008

What's the law got to do with it?

The answer is, a great deal, and in order to understand the position of kinship carers in Scotland and some of the challenges they face, an understanding of the legal backdrop is essential.

The post-concordat developments in relation to local authority support for kinship carers have focused primarily on kinship carers of 'looked-after' children, for whom local authorities have specific legal responsibilities.¹ Children in this situation will, by and large, be: subject to a compulsory supervision order under the Children's Hearings (Scotland) Act 2011; looked after under section 25 of the Children (Scotland) Act 1995 (the '1995 Act'); or be subject to a permanence order under Part II of the Adoption and Children (Scotland) Act 2007. While local authorities have a general duty to 'promote and safeguard' the welfare of children in need,² they have specific and enhanced duties and responsibilities in relation to children who are 'looked after'. Children living in kinship care who are not looked after by the local authority may be subject to a residence order under section 11 of the 1995 Act, or the arrangement may be informal. Where a child is not looked after, there may, nevertheless, be significant social work involvement, or there may be none.

Following the 2007 concordat, the Looked After Children (Scotland) Regulations 2009 (the '2009 regulations') came into force, providing a framework for the assessment and approval of kinship carers of looked-after children and empowering local authorities – but not obliging them – to provide kinship care allowances to them. At the same time, two other potential powers which enable local authorities to pay a 'kinship care allowance', and which predate these 2009 regulations, still exist. Firstly, section 50 of the Children Act 1975 allows for payment to be made towards the maintenance of a child aged under 18 who is not living with her/his parents. Secondly, section 22 of the 1995 Act sets out the local authority's duty to safeguard and promote the welfare of children in need. This broad power includes the potential to provide assistance 'in cash'. Again, it is important to note that neither of these provisions obliges the local authority to pay a kinship care allowance. And although Scottish government ministers have the potential power to set the rate of kinship care allowances and to oblige local authorities to make such payments,³ they have not taken this up. As this report sets out, local authorities vary in both the level of payments made and in the legal power they use to make those payments, with widely differing implications for individual carers.

In the area of financial support to kinship carers, two landmark judicial review judgments have emerged in the English legal context.⁴ It is important to note that there are significant differences, frequently overlooked in research and policy, between the legal position of kinship carers of looked-after children in England and Wales and those in

Scotland. One of the key differences is that kinship carers of looked-children in England and Wales are assessed as foster carers, albeit in respect specifically of the ‘kin’ children for whom they care, whereas in Scotland separate provisions relating to assessment and support exist for foster carers and kinship carers.

These two rulings are hugely significant in the English/Welsh legal context. However, in the Scottish context they have more limited impact. Clearly, the legal jurisdictions are separate and, more importantly, because in Scotland kinship carers of looked-after children are not normally assessed as ‘foster carers’, the legal starting point is different. The basis of both the English judgments is the different treatment of two groups of foster carers, related and unrelated. Although, in essence, an ‘approved kinship carer’ in Scotland may be comparable to a ‘related foster carer’ in England or Wales, the legal reality is that a Scottish approved kinship carer is not technically or legally a foster carer.

As yet, there have been no comparable legal challenges in Scotland and although one of the cases (*R (L) v Manchester City Council*) is often referred to in the Scottish context,⁵ it is neither directly applicable in Scotland, nor is it legally binding.

Much of the recent focus – in both law and policy – has focused on kinship carers of looked-after children. However, several commentators suggest that the distinction between this group of kinship carers and those caring for non-looked-after children is artificial and misleading. Dryburgh, for example, suggests that children in ‘non-looked-after’ kinship care arrangements may be experiencing equally difficult circumstances.⁶ In his study of 368 Scottish kinship carers, the reasons necessitating kinship care were very similar across looked-after and non-looked-after groups, ranging through addiction problems, bereavement and neglect in more or less equal measure. He comments on the apparent arbitrary nature of the distinction between ‘looked after’ and ‘non-looked after’, concluding that the Scottish government and local authorities should recognise that often kinship carers will require the same level of support, regardless of the ‘looked-after’ status of the child:⁷

Potentially successful kinship care arrangements for non-looked after children run the risk of failure for the want of modest investment in payments and support services.

Other recent studies echo this view. Hunt and Waterhouse found that children in informal kinship care typically have experienced similar adversities to children in formal kinship care arrangements.⁸ Selwyn, Farmer, Meakings and Vaisey in their UK-wide study of informal kinship care arrangements interviewed 80 children and their kinship carers.⁹ Although none of the children in this study had ‘looked-after’ status, many had moved from abusive or neglectful homes and 88 per cent were thought by their carers to have previously been maltreated. Seventy-one per cent of the carers had approached children’s services for support or assistance. Of these requests, 41 per cent had been unsuccessful.

The Manchester and Tower Hamlets judgments

In 2001, the case of *R (L) v Manchester City Council* [2001] EWHC 707 considered the position of short-term related foster carers, to whom the local authority paid a much lower rate of fostering allowance than unrelated short-term foster carers. The High Court held that the council's policy was unlawful in that it was both irrational and discriminatory. The council's attempt to justify its policy as striking a balance between adequate levels of financial support for related foster carers and the risk of 'inappropriate financial dependency' was roundly rejected by the Court. This judgment established the principle that related foster carers should be paid fostering allowances equivalent to those paid to unrelated foster carers.

What this judgment did not consider was the additional fee or reward element that many unrelated foster carers are paid in addition to fostering allowances. This has now been considered in *R (on the application of X) v London Borough of Tower Hamlets* [2013] EWHC 480. In this case, the applicant was an aunt caring for three siblings, all of whom had complex and challenging learning and behavioural difficulties. The children were looked after by the local authority and before coming to live with their aunt had been cared for by three different foster carers, none of whom could cope with the children's challenging needs. The children's aunt was able to provide a stable and caring environment for the children, although in order to do so she had to give up her job and thereby lose a considerable degree of financial independence. The fostering allowances this carer received from the local authority, while deemed adequate in terms of meeting the children's needs, were nevertheless significantly less than what an unrelated foster carer would have received because the local authority's policy precluded the payment of a fostering 'fee' to related foster carers.

The High Court found that, while fees need not be paid to foster carers, where they are paid, related and unrelated foster carers should be treated equitably. Although the local authority argued that there were different expectations of related and unrelated foster carers and that their roles were sufficiently different as to justify the different treatment, the Court rejected this assertion. The local authority's policies were found to be unlawful on the basis that they discriminated on the grounds of the pre-existing relationship between the child and foster carer and that there was no legitimate justification for such discrimination. The local authority's efforts to have the decision overturned were unsuccessful, with the Court of Appeal reiterating the findings of the High Court and endorsing the description of the carer as 'one of the unsung heroines of our society'.

Notes

- 1 s17 Children (Scotland) Act 1995
- 2 s22 Children (Scotland) Act 1995
- 3 s110 Adoption and Children (Scotland) Act 2007
- 4 *R (L) v Manchester City Council* [2001] EWHC 707 and *R (on the application of X) v London Borough of Tower Hamlets* [2013] EWHC 480
- 5 Association of Directors of Social Work and Fostering Network, *Family and Friends as Carers: report from ADSW and the Fostering Network Working Group*, 2003; J Aldgate and M McIntosh, *Looking After the Family: a study of children looked after in kinship care in Scotland*, Social Work Inspection Agency, 2006
- 6 K Dryburgh, *Relative Value: the experiences of kinship carers using the Scottish CAB Service*, Citizens Advice Scotland, 2010
- 7 K Dryburgh, *Relative Value: the experiences of kinship carers using the Scottish CAB Service*, Citizens Advice Scotland, 2010, p57
- 8 J Hunt and S Waterhouse, *It's Just Not Fair! Support, need and legal status in family and friends care*, Family Rights Group, 2013
- 9 J Selwyn, E Farmer, S Meakings and P Vaisey, *The Poor Relations: children and informal kinship carers speak out*, University of Bristol, 2013

Outcomes for children living in kinship care

The increasing number of children being cared for by kinship carers and, in particular, the increasing preference for kinship care as the first option for children looked after by a local authority reflects the widely held view that kinship care, where possible, is best. Scottish government policy supports this perspective: *Getting it Right for Every Child in Kinship and Foster Care* states that:¹

... unless there are clear reasons why placement within the family would not be in the child's best interests, care within the wider family and community circle will be the first option for the child.

Available research supports this proposition, but also points to the dearth of robust, longitudinal studies into the outcomes for children who spend time in kinship care.² A 1984 study into long-term foster care in England by Rowe, Cain, Hundleby and Keane compared the outcomes for children in related and unrelated foster care.³ This study looked at 200 children in foster care within five different English local authorities over a period of four years (1978–1982). It found that children living with related foster carers, compared with those living with unrelated foster carers, had fewer behavioural problems, were less anxious, had better school achievement and had more contact with their birth parents.

It is a measure of the paucity of relevant research that by 2006, Aldgate and McIntosh were still relying on this earlier study, which was, by that stage, over two decades old. Aldgate and McIntosh's research, which forms the basis for much of the current governmental kinship care policy, explored the current practice across Scottish local authorities in relation to kinship carers of looked-after children, and investigated some key issues, including children's experience of kinship care.⁴ It did not claim to be a comparative study or one that considered the outcomes for children looked after in kinship care. Instead, it relied on the earlier research which had found that 'children fostered by relatives seemed to be doing better in virtually all respects than those fostered by strangers'.⁵

There have been some more recent studies which point to some of the potential advantages of kinship care. For example, Broad, Hayes and Rushforth's research looked at the experiences in kinship care of 50 young people.⁶ The aim of this study was to examine the 'role and contribution of kinship care in supporting young people making the transition into adulthood'.⁷ The research entailed case record examination and face-to-face interviews with young people, their carers and with social work staff. Emerging from the interviews was a sense of various positive experiences, including of being 'rescued' from local authority care, maintaining links with other family and friends, and retaining cultural and/or racial heritage.

Farmer and Moyers' extensive study of children in unrelated foster care and in kinship care over a period of two years assessed placements for

quality and disruption.⁸ The study concluded that there was no significant difference in the quality or disruption levels between kin or unrelated placements, although they did find that kinship carers were more likely than unrelated foster carers to continue to care for children with very difficult behaviour. Interestingly, the highest levels of stability in kinship care placements were found where kinship carers were assessed as foster carers. The study's authors raise the important question of whether this is the consequence of the increased stringency in assessment of these carers, from enhanced financial support, or from a combination of both.

Selwyn, Farmer, Meakings and Vaisey's recent study of kinship carers of non-looked-after children highlighted various protective factors in kinship care arrangements, including, for example, carers' commitment to the children and the children's having a sense of physical and psychological security.⁹ While this was an extensive survey involving interviews with 80 children and their carers across the UK, it does not claim to provide longitudinal data. It is, however, able to make comparisons between the wellbeing of children in kinship care, those in the general population and those in unrelated foster care. The study found that, while children in kinship care displayed greater difficulties than children in the general population, the proportion with difficulties was smaller than that of children growing up in unrelated foster care.

Notes

- 1 Scottish Government, *Getting it Right for Every Child in Kinship and Foster Care*, 2007, p3
- 2 For example, B Broad and A Skinner, *Relative Benefits: placing children in kinship care*, British Association for Adoption and Fostering, 2005; B Broad, 'Some Advantages and Disadvantages of Kinship Care: a view from research' in C Talbot and M Calder (eds), *Assessment in Kinship Care*, Russell House Publishing, 2006, pp13-24; V O'Brien, 'The Benefits and Challenges of Kinship Care', *Child Care in Practice*, 18:2, 2012, pp127-146
- 3 J Rowe, H Cain, M Hundleby and A Keane, *Long-term Foster Care*, B T Batsford, 1984
- 4 J Aldgate and M McIntosh, *Looking After the Family: a study of children looked after in kinship care in Scotland*, Social Work Inspection Agency, 2006
- 5 J Aldgate and M McIntosh, *Looking After the Family: a study of children looked after in kinship care in Scotland*, Social Work Inspection Agency, 2006, p4
- 6 B Broad, R Hayes and C Rushforth, *Kith and Kin: kinship care for vulnerable young people*, National Children's Bureau, 2001
- 7 B Broad, R Hayes and C Rushforth, *Kith and Kin: kinship care for vulnerable young people*, National Children's Bureau, 2001, p4
- 8 E Farmer and S Moyers, *Kinship Care: fostering effective family and friends placements*, Jessica Kingsley, 2008
- 9 J Selwyn, E Farmer, S Meakings and P Vaisey, *The Poor Relations: children and informal kinship carers speak out*, University of Bristol, 2013

How kinship carers are supported

As with research into longer term outcomes for children living with kinship carers, historically there has been a lack of data on how kinship carers in Scotland are supported by local authorities. In 2003, the Association of Directors of Social Work and the Fostering Network found 'significant variation in the approaches to... paying family and friends carers', but the report does not reveal any detail regarding the level of, or variation in, financial support.¹

Aldgate and McIntosh sought data from all 32 Scottish local authorities about how they supported kinship carers of looked-after children.² At that point, only 12 local authorities paid kinship carers of looked-after children an equivalent rate to the allowance paid to unrelated foster carers. A further 10 local authorities paid a regular allowance, but at a lower rate than their fostering allowance, varying between one-third and 80 per cent of the fostering allowance. Three local authorities reported that they made no regular payments to kinship carers of looked-after children. The policies of the remaining seven local authorities are unclear. What is apparent from this research is that there was a lack of any consistency across local authorities in Scotland in relation to financial support of kinship carers.

Although there is little specific research into what difference financial support makes to kinship care arrangements, there are indications that enhanced financial support improves outcomes for children in kinship care. For example, Farmer and Moyers recorded the highest level of stability for those living with kinship carers who had been assessed as foster carers and were being paid a fostering allowance,³ while Saunders, in her study of the work of a kinship care team in the London Borough of Greenwich, found that even limited financial help from the local authority could enhance the sustainability of informal kinship care arrangements, allowing children to continue being cared for by their family network.⁴ This finding is echoed in social work practitioners' views reported in the recent Mentor UK report: 'a lot can be alleviated by financial assistance.'⁵ Aldgate and McIntosh found that among the kinship carers in their study, adequate financial support was what they most desired, along with greater recognition of their role.⁶

Regardless of who a child lives with, it is well established that material deprivation can significantly limit attainment in a range of areas, including education, employment, health and life expectancy.⁷ It would seem unlikely therefore that adequate financial support would not have a positive impact on children living with kinship carers. Furthermore, given that social work services are disproportionately focused on people living in deprivation,⁸ lifting kinship care families out of poverty may also reduce the likelihood of continued social work involvement.

In spite of this, some commentators have noted reluctance on the part of local authorities to remunerate kinship carers at even a basic level, let alone to a level equivalent to that paid to unrelated foster carers. Hunt and Waterhouse observe a tendency for local authorities to encourage kinship carers to obtain residence orders (whereby the child is not looked after by the local authority), thus reducing the concomitant costs for the local authority.⁹ Selwyn, Farmer, Meakings and Vaisey report carers being ‘pressed to apply for a private law legal order soon after the child had arrived’ and sensing that they had been financially disadvantaged as a result of doing so.¹⁰ This perceived or actual reluctance to remunerate kinship carers raises the question of whether the increase in the use of kinship care as an option for children who are either looked after by the local authority, or would otherwise be looked after if they were not living with relatives, is driven not only by the belief that it is in the child’s best interest, but by financial expediency.

The local authorities’ defence in the Manchester and Tower Hamlets’ judgments described earlier seems to reveal a more complex rationale for failing to support kinship carers at an equivalent level to unrelated foster carers. Underpinning the local authorities’ arguments in these cases is the sense that there is something morally undesirable in paying family members to care for ‘their own’, with the possibility of ‘inappropriate financial dependency’ or even exploitation of a system of financial reward arising as a result of such arrangements. However, in their extensive study, Farmer and Moyers found little evidence of kinship carers embarking on or continuing to care for children for financial gain.¹¹

Local authorities have posited that financial support can create a perverse incentive against rehabilitation, particularly given that a well-supported kinship carer may receive greater financial support than the child’s parents would through ordinary state benefits.¹² Aldgate and McIntosh, in reference to this ‘dilemma’, comment:¹³

Surely it is morally wrong to justify a policy of paying lower rates to kinship carers which would keep the children in poverty, on the grounds that if they were living with their parents, they would be living in poverty anyway.

In spite of the difficulties and debate around where the boundary between family obligation and state support should lie, by 2006 Aldgate and McIntosh presented a cogent argument as to why kinship carers of looked-after children should receive financial support equivalent to the fostering allowance received by unrelated foster carers. Their argument is a combination of the moral and the pragmatic. Kinship carers who rise to the challenge of caring for children for whom they have a familial obligation, but no parental responsibility, deserve ‘symbolic recognition for the moral choice they have made’.¹⁴ Furthermore, in order to ensure that the children looked after in kinship care have the optimum opportunities, it is crucial that they do not grow up in poverty: ‘the principle of “minimum intervention” [enshrined in the Children (Scotland) Act 1995] does not mean the principle of “minimal” support.’¹⁵

As this report has already noted, the concordat between the Scottish government and Scottish local authorities seemed to adopt the main

recommendations of Aldgate and McIntosh's report in relation to financial support, and subsequent government policy reflected this position with a commitment to ensure:¹⁶

... consistent and fair financial support for kinship and foster carers by promoting consistent financial support for foster carers and parity of financial support for kinship carers of looked after children.

The next section of this report examines the extent to which these commitments have translated into reality.

Notes

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- 3 E Farmer and S Moyers, *Kinship Care: fostering effective family and friends placements*, Jessica Kingsley, 2008
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- 8 R Lister, *Poverty*, Polity Press, 2004; Mantle and Backwith, 'Poverty and social work', *British Journal of Social Work* 40(8), 2010, pp2380-97
- 9 J Hunt and S Waterhouse, *It's Just Not Fair! Support, need and legal status in family and friends care*, Family Rights Group, 2013
- 10 J Selwyn, E Farmer, S Meakings and P Vaisey, *The Poor Relations: children and informal kinship carers speak out*, University of Bristol, 2013, p13
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- 13 J Aldgate and M McIntosh, *Looking After the Family: a study of children looked after in kinship care in Scotland*, Social Work Inspection Agency, 2006, p15
- 14 J Aldgate and M McIntosh, *Looking After the Family: a study of children looked after in kinship care in Scotland*, Social Work Inspection Agency, 2006, p150
- 15 J Aldgate and M McIntosh, *Looking After the Family: a study of children looked after in kinship care in Scotland*, Social Work Inspection Agency, 2006, p152
- 16 Scottish Government, *Getting it Right for Every Child in Kinship and Foster Care*, 2007, p22

Financial support to kinship carers in Scotland

There have been considerable developments in support to kinship carers of looked-after children since the 2007 concordat, although the pace of change has been slower than many might have hoped. The initial announcement gave the impression that allowances would start being paid to kinship carers from April 2008 and would be set at a level of between £119 and £198 a week.¹ This was followed by press coverage which accentuated the positives. For example, the Scottish *Daily Record's* headline on 5 December 2007: 'Caring grandparents to get extra cash: grandparents who look after their grandkids full time are to get up to £200 a week extra in benefits'.² The *Herald* reported that the agreement would mean that 'people like grandparents, looking after relatives' children who would otherwise be taken into care, will be paid up to almost £200 per week'.³ However, it quickly became apparent that many kinship carers would have to wait a lot longer for their local authority to comply with the terms of the concordat. A Convention of Scottish Local Authorities (COSLA) executive group update on 5 February 2008 reflect this position:

There are reports that kinship carers have high expectations that they will be entitled to allowances paid at the Foster Network recommended level from April 2008, if they are looking after kin children. This is clearly not the case and expectations need to be managed... The most important point is that councils who sign up to the Concordat will have a corporate obligation to deliver the kinship allowances on the same basis and the same level as their individual arrangements for stranger foster carers during the term of the Concordat. Practically, this means the arrangements have to be in place in the financial year 2010 to 2011.

Debate in the Scottish Parliament on 11 December 2008 reflected the limited progress one year after the initial announcement. Rhona Brankin MSP reported that a Freedom of Information request to local authorities had gleaned results from 24 authorities, only 10 of which were paying a kinship care allowance at that point. Only two were paying at a rate equivalent to the local authority's fostering allowance.⁴

By 2009, 24 of the 32 local authorities had complied with the terms of the concordat and were making payments to kinship carers of looked-after children, but only three were making payments at a rate equivalent to their own fostering allowances.⁵ Payments varied significantly between local authorities, with the highest payment six times higher than the lowest.

Recent data reveals that financial support remains variable across the 32 Scottish local authorities, although they all pay an allowance at some rate.⁶ Only eight local authorities pay an allowance equivalent to the fostering allowance rate:⁷ interestingly, this is four fewer than were reported to pay a rate equivalent to fostering allowance before the concordat.⁸ There is no indication that any pay a 'fee' element. The average (mean) payment is £104.09 per week and there remains wide

variation in the amounts paid, with the lowest at around £40 per child per week, and the highest at over £250 per child per week.⁹

This, however, is not the whole story. As a result of the complex interaction between Scottish kinship care payments and the UK state benefits and tax credits system, the level of local authority payment does not necessarily represent the actual financial impact for the individual kinship carer.

The main child-related social security benefits are child benefit and child tax credit. Child benefit is not means tested, although it is now clawed back through the income tax system from individuals with a taxable income of over £50,000.¹⁰ Child tax credit is means tested and provides support for individuals or couples with dependent children, whether in or out of work. Only those on a relatively low income receive child tax credit.¹¹ Together, child benefit and child tax credit can amount to around £84 per week per child, with child tax credit increasing by up to £84 if the child has a severe disability. Child benefit accounts for only £20.70 (for the eldest or only child, £13.70 for each of the other children) of the total, and therefore child tax credit is currently the most significant child-focused financial support for low-income households.¹²

Within both the child benefit and child tax credit systems there are provisions intended to prevent payment if a child is 'looked after and accommodated' by the local authority.¹³ While these regulations are aimed primarily at children in foster care or living in residential accommodation, these somewhat tortuous legal provisions prevent some Scottish kinship carers of looked-after children from receiving state benefits in respect of the child for whom they care.¹⁴

Crucial to this issue is not the fact that the child is residing with a kinship carer, but the combination of the child's looked-after status, the legal provision used by the local authority to make payment to the kinship carer, and what the purpose of the payment is. In short, payments made under regulation 33 of the Looked After Children (Scotland) Regulations 2009 (the '2009 regulations') are likely to result in no award of either child benefit or child tax credit. Payments made under section 50 of the Children Act 1975 which are, by definition, in respect of the child's maintenance, generally result in child benefit being payable, but not child tax credit. Payments made under section 22 of the Children (Scotland) Act 1995 (the '1995 Act'), provided they are not in respect of the child's accommodation or maintenance, should not prevent child benefit or child tax credit being paid.¹⁵ Twenty local authorities make their kinship carer payments under section 50 of the Children Act 1975, nine under section 22 of the 1995 Act and three under regulation 33 of the 2009 regulations.¹⁶

When analysing the level of kinship care allowances made by different local authorities, it is therefore crucial to consider this complex and apparently arbitrary interaction between local authority payments and state benefits. If a low payment under regulation 33 is offered to a kinship carer, the carer may lose more than s/he stands to gain, unless s/he is relatively affluent and would not receive child tax credit, regardless of

the kinship care allowance. For example, a payment under regulation 33 of £50 per week would potentially prevent the kinship carer from receiving child benefit and child tax credit of around £84 or more per week. The same level of payment made under section 22 of the 1995 Act (provided it is not in respect of accommodation or maintenance) would not preclude entitlement to child benefit or child tax credit, resulting in the kinship care allowance being paid in addition to state benefits. The same payment made under section 50 of the Children Act 1975 would preclude child tax credit, but not child benefit.¹⁷ We therefore have a situation in which local authorities' expenditure on each child in kinship care may be the same (for example, £50 a week), but the gain to the individual may be entirely different – ranging from fully gaining by £50 to being unable to accept the payment without being worse off. Put simply, considering the level of payment made by the local authority to the carer does not give a true indication of the actual level of support.

Case study: Maggie

Maggie is aged 55 and single. She cares for her two grandchildren, aged 7 and 9, who are 'looked after' by the local authority. Maggie is not able to work because of poor health and gets employment and support allowance of £102.15 a week. The local authority pays Maggie a kinship care allowance of £60 for each child (£120 in total). The power it uses to make this payment is section 50 of the Children Act 1975. This means that, by definition, the payment is for maintenance. Maggie can get child benefit for the two children – this is £34.40 a week. She cannot get child tax credit – this would have been around £117 a week.

The local authority is paying £120 per week, but Maggie only gains £3 a week compared with simply claiming UK state benefits.

If the local authority made the payment under section 22 of the Children (Scotland) Act 1995 and the payment was accepted as not being in respect of accommodation or maintenance, Maggie could claim child tax credit as well as the kinship care allowance.

A further and perverse impact of the interaction between child tax credit and local authority kinship care allowances paid under either section 50 of the Children Act 1975 or under regulations 33 of the 2009 regulations is that more affluent kinship carers may benefit by more than poorer kinship carers; because child tax credit is means tested, being denied it only impacts on families who have a low income.¹⁸ The affluent kinship carer would not receive child tax credit regardless of the level or type of payment from the local authority and is therefore unaffected by the interactions described above.¹⁹ Given that kinship carers are more likely than not to be living in poverty, there may not be many in this position.²⁰ Nevertheless, it seems ironic that the interaction between local authority payments and the state benefits system should result in this iniquitous, albeit presumably unintended, outcome.

An obvious question which arises from this analysis is why the majority of local authorities choose to use section 50 to make payments to kinship carers. Although we do not have direct findings on this question, it is our assumption that many have concluded that this is the most apt power to utilise, given its terms.²¹ In addition, it is possible that the decision to use section 50 has been made without full recognition of all the complex interactions with UK state benefits.

Although some of the complexity of the interaction between local authority support to kinship carers and the UK benefits and tax credits system was acknowledged at the outset of the concordat, it is clear from the Scottish Executive's own publication, *Kinship Carers: possible benefit entitlement and potential issues when claiming benefits*, that the potential difficulties were not fully explored.²²

A sampling of enquiries received in 2014 from frontline advisers by CPAG in Scotland's advice line service reveals a range of difficulties arising from kinship care arrangements, financial support and the interaction with the benefits system. Common themes are confusion about 'looked-after' status, which legal power is being used by the local authority to make payments and the impact of those factors on benefit and tax credit entitlement. There is also a lack of clarity about a local authority's obligation to make payments to kinship carers and examples of kinship carers being wrongly pursued for overpayments of tax credits.

Notes

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- 3 S Paterson, 'Scotland leads the way with allowance for kinship carers', *The Herald*, 5 December 2007, www.heraldscotland.com/scotland-leads-the-way-with-allowance-for-kinship-carers
- 4 Scottish Parliament, Official Report Debate Contributions, 11 December 2008, <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4834>
- 5 K Dryburgh, *Relative Value: the experiences of kinship carers using the Scottish CAB Service*, Citizens Advice Scotland, 2010
- 6 Citizen's Advice Scotland, *Unpublished Report on Scottish Local Authorities' Financial Support to Kinship Carers*, 2014
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- 9 Citizen's Advice Scotland, *Unpublished Report on Scottish Local Authorities' Financial Support to Kinship Carers*, 2014
- 10 Child Poverty Action Group, *Welfare Benefits and Tax Credits Handbook 2015/2016*, 2015
- 11 Child Poverty Action Group, *Welfare Benefits and Tax Credits Handbook 2015/2016*, 2015
- 12 Child Poverty Action Group, *Welfare Benefits and Tax Credits Handbook 2015/2016*, 2015
- 13 Child Poverty Action Group, *Children's Handbook Scotland 2014/2015*, 2014
- 14 K Dryburgh, *Relative Value: the experiences of kinship carers using the Scottish CAB Service*, Citizens Advice Scotland, 2010; Child Poverty Action Group, *Children's Handbook Scotland 2014/2015*, 2014
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- 17 Child Poverty Action Group, *Children's Handbook Scotland 2014/2015*, 2014
- 18 Child Poverty Action Group, *Children's Handbook Scotland 2014/2015*, 2014
- 19 Child Poverty Action Group, *Children's Handbook Scotland 2014/2015*, 2014
- 20 S Nandy, J Selwyn, E Farmer and P Vasey, *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*, Bristol University, 2011
- 21 Without prejudice to any existing powers and duties to make payments in respect of the maintenance of children, where a child under the age of 18 is residing with and being cared for (other than as a foster child) by a person other than a parent of the child, a council constituted under section 2 of the Local Government (Scotland) Act 1994 may make to that person payments for or towards the maintenance of the child.
- 22 Scottish Executive, *Kinship Carers: possible benefit entitlement and potential issues when claiming benefits*, 2007

The introduction of universal credit

Universal credit is a new benefit which is being introduced on a gradual basis, replacing current means-tested benefits and tax credits for working-age people. Eventually it will replace income support, income-based jobseeker's allowance, income-related employment and support allowance, housing benefit, working tax credit and child tax credit. As will be clear from the range of benefits and tax credits being replaced, universal credit is intended to provide support in a wide range of situations and for various needs. For example, universal credit provides support to people in work and out of work, people who are jobseekers, those who are too unwell to work, and people who are carers. It potentially provides support with basic living expenses, with housing costs and with childcare. The process of introduction began in October 2013 and is anticipated to continue until at least 2017.

The question arises of how kinship carers will be affected by the introduction of universal credit – particularly kinship carers of looked-after children, for whom the benefits system currently presents such complexity. Universal credit will certainly simplify matters for this group of kinship carers, but not necessarily in a helpful way. In fact, for many kinship carers of looked-after children, and the local authorities supporting them, universal credit may pose very serious difficulties. The universal credit system excludes most looked-after children from financial support. This general rule only has two exceptions: one relating to children in short-term 'respite' and the other relating to children looked after 'at home' by someone who has parental responsibility for them.¹ Neither exception is likely to assist kinship carers of looked-after children who generally do not have formal parental rights and responsibilities.

The universal credit exclusion relates entirely to the 'looked-after' status of the child and does not take any account of the financial support offered by the local authority. In this regard, it differs from the child tax credit exclusion, where looked after status *and* payment from the local authority in respect of accommodation or maintenance are both relevant. In short, under the existing tax credits system, a kinship carer could refuse a payment from the local authority if to receive it would result in a net loss in income. But this is not an option under the universal credit system. This does not just impact on the 'child element' of universal credit, but potentially on the childcare costs and the housing costs elements. Furthermore, the 'work allowance' – the amount a claimant is allowed to earn before universal credit starts tapering away – may also be less generous.

Case study: Shona

Shona is aged 58 and single. She cares for her two grandchildren, Tom, aged 10, and Beth, aged 5, who are 'looked after' by the local authority. Shona is not able to work because of poor health and is on universal credit. Shona will not get any universal credit for the two children. Assuming neither child has a disability, this means she is 'losing' around £117 a week. If the payment she receives from the local authority is less than around £59 a week per child, she will be living on less than the absolute minimum set by the UK government. If either, or both, of the children have disabilities, the potential universal credit 'loss' could be significantly higher.

Case study: Sophia

Sophia is aged 45 and single. She cares for her nephew, Darren, aged 8, who is 'looked after' by the local authority. Sophia works 28 hours per week and has net monthly earnings of £1,200. Her monthly rent on her housing association flat is £360 and she pays £280 per month in childcare costs. Sophia claims universal credit, but is not entitled to any help. This is because her universal credit calculation does not include a 'child element' for Darren and does not include any help with childcare costs (because she is not 'responsible' for Darren under the universal credit rules). In addition, the amount of earnings she can have before her universal credit starts to taper away is less than it would be if she was treated as responsible for a child. Compared with a universal credit claimant in the same circumstances who is responsible for a child *not* looked after by the local authority, she is 'losing' over £125 per week. If the payment she receives from the local authority is less than around £125 a week, she will be living on less than the absolute minimum set by the UK government. See the Appendix for calculations relating to this case study.

Case study: Betty

Betty is aged 55 and single. She cares for her grandson, Ben, who is aged 8 and is 'looked after' by the local authority. Ben is severely disabled. He gets the disability living allowance highest rate care component and the lower rate mobility component. Betty is not able to work because of caring for Ben and she receives carer's allowance and universal credit. She will not get any universal credit for Ben and this means she is 'losing' around £149 per week. Ben's level of disability means that this figure is higher than it would be otherwise. If the payment she receives from the local authority is less than around £149 a week, she will be living on less than the absolute minimum set by the UK government.

As the case studies illustrate, the ‘simplification’ introduced by universal credit will pose some stark choices for kinship carers of looked-after children and for local authorities supporting them.

A further difficulty relates to the housing costs element in universal credit and, in particular, restrictions for renters who are deemed to be under-occupying their homes. This can affect claimants living in the private-rented and social-rented sectors. The problem, once again, is that a looked-after child living with a kinship carer is ‘invisible’ for universal credit purposes, and no bedroom is allotted for that child. The result is that a kinship carer may be penalised for under-occupying her/his home, despite every room being fully occupied. The effect of this is mitigated to some degree by a special rule which deems one extra bedroom as necessary if the claimant is a kinship carer of a looked-after child. This special rule helps some kinship carers, but not all.

Case study: Shona

Thinking again about Shona (aged 58 and single), caring for her two grandchildren, Tom and Beth, who are ‘looked after’ by the local authority. Shona is not able to work due to ill health and is on universal credit. Shona lives in a housing association flat which has three bedrooms and her monthly rent is £350. Shona will not get any universal credit for the two children and they do not ‘count’ for the purposes of housing costs element calculation. She is ‘allowed’ one extra bedroom, in addition to one for herself, because she is a kinship carer of looked-after children, but this still means that she is treated as under-occupying her home, because she has three bedrooms. Her housing costs element will be reduced by £49 per month (14 per cent of £350). If the children were not ‘looked after’, she would be treated as requiring three bedrooms, would not be under-occupying and would not be subject to any reduction.

Notes

- 1 Regs 4 and 4A Universal Credit Regulations 2013, SI No.376

The Children and Young People (Scotland) Act 2014: a new legal landscape for kinship care?

Seven years after the concordat and in many ways in response to the experience of those seven years, the Children and Young People (Scotland) Act 2014 (the '2014 Act') introduced the concept of a 'kinship care order'. This is not an entirely new order. In fact, the 2014 Act amends the existing residence order provisions contained in section 11 of the Children (Scotland) Act 1995. A kinship care order will be a residence order issued to 'qualifying' kinship carers of 'eligible' children. A child subject to this type of order is not 'looked after' by the local authority and this, at least in part, is the rationale for its introduction. The Financial Memorandum accompanying the Children and Young People (Scotland) Bill stated that:¹

Part of the purpose of the order and the accompanying measures is to reduce unchecked growth in formal kinship care, which has increased by 87 per cent over the four years since 2007.

Given that the Scottish government's own policy for several years has been to actively encourage kinship care over other forms of local authority care, this growth seems hardly surprising. Perhaps more unexpected is the sense from the above statement that this is now a problem that has to be addressed. The Policy Memorandum accompanying the Bill expressed a different rationale:²

... to provide an alternative to being in care (for those children at risk of becoming looked after or already looked after in kinship care) and, in so doing, improve the support available for kinship carers.

Whatever the motivation, there seems to be at least an element of cost-cutting involved: the Financial Memorandum refers to potential cost savings, achieved because the kinship care order will act 'to prevent a child becoming looked after unnecessarily'.³

The 2014 Act establishes in broad terms that linked to having a 'kinship care order', there may be 'kinship care assistance', including the provision of counselling, advice or information and financial support (sections 71 and 73). The detail of the assistance is left to secondary legislation and is not yet published. There are, however, strong indications that discretion regarding the type and level of assistance will remain with local authorities. As the Bill made its way through parliament, the Minister for Children and Young People, in response to questions from the Education and Culture Committee, stated that the:⁴

... level of support or assistance which will be provided by local authorities will vary on a case by case basis, depending on the individual circumstances of the child/children concerned.

Notes

- 1 para 128
- 2 para 151
- 3 para 130
- 4 Letter from Aileen Campbell MSP, Minister for Children and Young People to Stewart Maxwell MSP, Convener of Scottish Parliament Education and Culture Committee, p24. Letter dated 29 November 2013, available at: [www.scottish.parliament.uk/S4_EducationandCultureCommittee/Children%20and%20Young%20People%20\(Scotland\)%20Bill/2013.11.29CYPBillSGresponse.pdf](http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Children%20and%20Young%20People%20(Scotland)%20Bill/2013.11.29CYPBillSGresponse.pdf)

Greater devolution of powers: a way forward for kinship carers?

Following the referendum on Scottish independence in September 2014, all the main political parties agreed that wider powers should be devolved to the Scottish Parliament, including some 'welfare' powers. The Smith Commission proposed that certain benefits – for example, disability benefits and carer's allowance – be devolved to Scotland.¹ The Commission also concluded that aspects of universal credit should be devolved and that the Scottish Parliament should have the power to create new benefits in areas of devolved responsibility. These two proposals warrant further scrutiny in relation to kinship carers.

Firstly, universal credit. Could the proposed devolution of aspects of the universal credit system assist with the difficulties set out earlier? The short answer is no, except in relation to the 'bedroom tax' issue. The proposal is to devolve mainly administrative aspects of universal credit – for example, the frequency of payment and payment of the housing costs element directly to the claimant's landlord. Apart from limited powers in relation to the housing costs element, the power to vary universal credit elements and the earnings taper will remain a reserved matter. In other words, the Scottish Parliament will not have the power to override the rules that result in a looked-after child in kinship care being 'invisible' in the universal credit system.

Under the proposals, the Scottish Parliament *will* have the power to address the 'bedroom tax' issue and so potentially could mitigate against the financial loss caused by a looked-after child not being 'counted' for bedroom tax purposes.

Secondly, the power to create new benefits in areas of devolved responsibility. Could the Scottish Parliament use this proposed power to create some kind of national kinship carer benefit? The Smith Commission proposal was that:²

The Scottish Parliament will have the powers to create new benefits in areas of devolved responsibility...

This appeared to raise the possibility of creating new benefits in a fairly wide range of devolved areas, such as housing, childcare or, indeed, kinship care. However, the draft clauses contained in the Command Paper *Scotland in the United Kingdom: an enduring settlement* indicate a much narrower scope. Essentially, these restrict any new benefit creation to the 'welfare' areas that are planned for devolution, such as disability benefits. How this issue is resolved remains to be seen.

Even if the Scottish Parliament achieves the power to create new benefits in the wider sense, there would then be the question of whether the political will exists to create some kind of national kinship care

benefit. It is interesting to note that Scottish ministers already have the potential power to determine the minimum level of financial support to be provided by local authorities to 'approved' kinship carers, and indeed to foster carers, but have not taken this up.³

Notes

- 1 Smith Commission, *Report of the Smith Commission for Further Devolution of Powers to the Scottish Parliament*, 2014, available at: www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf
- 2 clause 54
- 3 Under s110 Adoption and Children (Scotland) Act 2007

Conclusion and recommendations

Kinship carers can provide love, stability and care for children whose parents are unable to care for them, and this is acknowledged in the growth of kinship care as the first choice, where possible, for local authorities in relation to children who are looked after or in danger of becoming looked after. Since the concordat agreement seven years ago there have, undoubtedly, been significant developments in financial support to some Scottish kinship carers. However, this report highlights both the potential importance of this support and also its variable, and sometimes inadequate, nature. In relation to the tortuous interaction with the existing UK benefits system and the implications when universal credit is rolled out, there are lessons to be learned at all levels of government.

Recommendations for local authorities

- ◆ Local authorities should consider how best to use their existing powers for the maximum benefit of kinship carers and the children they care for, to ensure that kinship care arrangements are stable and sustainable, and that children in these families are not living in poverty.
- ◆ Local authorities should ensure that they are fully aware of the interaction of their powers with the UK social security system, again to ensure that any financial support to kinship carers has the best possible impact, both in terms of benefit to the kinship families and in terms of the outlay by local authorities.
- ◆ Local authorities should ensure that advice, support and income maximisation services are available to kinship carers to help them negotiate the complicated interactions between local authority support and the UK social security system. CPAG in Scotland is aware of some excellent examples of good practice which already exist.

Recommendations for the Scottish government

- ◆ The Scottish government should ensure that, in utilising any devolved powers, it takes full account of the interaction with reserved social security powers from the planning stage onwards in order to try to avoid the kinds of iniquitous outcomes which this report highlights.
- ◆ The Scottish government should consider taking up the powers that are already available to it in section 110 of the Adoptions and Children (Scotland) Act 2007 to ensure there is a national minimum level of

payment to kinship carers of looked-after children, thereby addressing the issue of variability of allowances across the 32 local authorities.

Recommendations for the UK government

- ◆ The UK government should ensure that it is fully aware of the Scottish legal context when planning any changes to the social security system which may interact with devolved provisions.
- ◆ The UK government should urgently consider amending the universal credit regulations to take account of the fact that many Scottish kinship carers are paid by the local authority at a level far below the fostering allowance rate.

Recommendations for all levels of government

All levels of government – local authority, Holyrood and Westminster – potentially have a role to play in the support of kinship carers and the children for whom they care. This presents the opportunity for all parties to work cooperatively to ensure the best possible outcomes for these families. Unfortunately, it can also present the possibility of shifting responsibility between the different levels of government, to the detriment of kinship care families.

CPAG in Scotland urges all parties to acknowledge the very important role these carers play in raising children who might otherwise be living in foster or residential care and who have often had a very difficult start in life. We urge all parties to work together to ensure that children living with kinship carers are helped to reach their full potential.

Appendix: Sophia case study calculation

Single person, aged 45, with one child, aged seven.

Net monthly earnings = £1,200 (assume no other relevant income)
Monthly rent = £360 (assume no housing element restriction)
Monthly childcare costs = £280

Calculation with Sophia not responsible for Darren:

Maximum universal credit (monthly):

Standard allowance = £317.82

Housing element = £360.00

Total = £677.82

Earnings = £1,200.00

Less 'work allowance' = £111.00

= £1,089.00 x 65%

= £707.85 (deduct from maximum universal credit produces nil award)

Calculation with Sophia responsible for Darren

Maximum universal credit (monthly):

Standard allowance = £317.82

Child element = £277.08

Childcare element = £196.00 (£280 x 70%)

Housing element = £360.00

Total = £1,150.90

Earnings = £1,200.00

Less 'work allowance' = £263.00

= £937.00 x 65%

= £609.05

Deduct £609.05 from maximum universal credit of £1,150.90 = £541.85
universal credit per month (approximately £125 per week)