

Kinship care and the UN Convention on the Rights of the Child

Submission to the UN Committee on the Rights of the Child for the Day of General Discussion: “Children’s Rights and Alternative Care”

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On Consultation with Kinship (formerly Grandparents Plus), Kinship Care Ireland and Kinship Carers Liverpool

Summary

Kinship care is the full-time care of children by family or close family friends when their parents are no longer able to look after them. Research points to a serious lack of state support for kinship carers, who are disproportionately elderly and financially disadvantaged. There are obvious human rights issues – particularly children’s rights issues – at play in relation to kinship families. Children have a right to be with their family and it is usually in their best interests. Yet this is made difficult to achieve, as kinship carers get little or no assistance from the state, even though their care often prevents children from entering the care of the state. Relevant laws are confusing and inadequate, and kinship carers frequently cannot afford access to justice. A General Comment on Children in Alternative Care provides an excellent opportunity to emphasise the children’s rights issues inherent in the area of kinship care. It is recommended that the Committee include a specific section in such a General Comment on the rights of kinship care children. This submission is made from the perspective of kinship care in the UK and the Republic of Ireland. However, many of these issues will apply to kinship care families all over the world.

1. What is kinship care?

“I became a kin kid because when my sister and I were babies, my mum ... wasn’t well enough to look after us at the time, so my nan and grandad look after us now”
(As told by kin child to Kinship Carers Liverpool [KCL], 2021).

Relatives are often in the best position to provide a secure home for children where, for whatever reason, their parents cannot care for them. Kinship care is the full-time care of children by family or close friends when their parents are no longer able to look after them. It is usually done by grandparents, older siblings, aunts, uncles and other relatives. It occurs because of a crisis such as an inability to parent, the death of the child’s parent, parental substance dependency, illness, or imprisonment. It can be a temporary or permanent arrangement and can also be on a formal or informal basis. Research evidence suggests that outcomes for children in kinship care are generally positive (Grandparents Plus, 2020).

Formal kinship care is where kinship carers have been approved or licensed by state agencies (see further O’Brien, 2015). Informal kinship care is where the state has not had such involvement – it generally comes with little or no financial support – 2021 research has shown for example that in England and Wales 85% of kinship carers raising children on an

informal arrangement did not receive a financial allowance¹. There is often no legal relationship between carer and child, usually because of a lack of knowledge of how to obtain this, or a lack of funding for legal representation.

There are very high numbers of children being looked after in kinship care arrangements. At the time of the 2011 Census, one in 74 children in England were growing up in the care of relatives (Wijedasa, 2015) – 152,910 children. There are an estimated 10,000 children in the care of relatives in the Republic of Ireland.² It is estimated that one in four children in care in Ireland and one in three in Scotland live in kinship care arrangements (Hill, Gilligan and Connelly, 2020).

2. Applying the CRC to kinship care

The right of children to enjoy the care of their own family is fundamental. There are numerous references to the rights of children to have continuity of access to a family environment, and to maintain their sense of identity, in both the preamble to and the provisions of the Convention.

2.1 The principle of the best interests of the child

Upholding the best interests of the child by properly resourcing kinship care

The CRC upholds the right of children to remain within their extended family, and emphasises the state obligation to support families. Article 24 refers to the special protection and assistance owed by the state to children deprived of a family environment, and refers to the desirability of continuity in a child's upbringing, which of course kinship care can provide. Article 8 refers to the right of children to preserve their identity, including “family relations”. As indicated by this kin child, the love and continuity of a child’s extended family can be invaluable when their birth parents cannot care for them: “I love living with my nan! She cooks my favourite tea, a curry! She gives me the best hugs and makes me feel safe and that I belong” (As told by kin child to KCL, 2021).

Article 3 enshrines the principle that in all actions concerning children, the best interests of the child shall be a primary consideration. Therefore, local authorities and state agencies responsible for children’s care have an obligation to uphold the best interests of children as a primary consideration by ensuring that kinship carers have adequate support for the important task which they are undertaking.

Upholding the best interests of the child by properly ensuring that kinship arrangements are appropriate and safe

Many children live in informal kinship care arrangements, without state intervention. It is not clear that state authorities establish whether it is in fact, in the best interests of children to live in their extended family as compared with in other forms of child placement such as adoption and foster care (Nuffield Family Justice Observatory [NFJO], 2019). Authorities must ensure that they have established this adequately, with due regard for the need not to intrude unnecessarily in kinship care arrangements.

¹ <https://kinship.org.uk/financial-survey/> (accessed 3 June 2021).

² <http://www.kinshipcare.ie/are-you-a-kinship-carer/> (accessed 3 June 2021).

2.2 Appropriate financial assistance for kinship care families

“So human rights in that element to me, and I suppose fairness, you know I think we should be entitled to...a hell of a lot more than what’s available.” (Kinship Carer Interviewee in Daly, 2021)

Research points to a serious lack of financial support for kinship carers, who are disproportionately poor and elderly (Grandparents Plus, 2020). Strikingly, in England in 2011, over three quarters (76%) of kinship children were living in a deprived household (Wijedasa, 2015).

There are numerous provisions of the CRC which make reference to the obligation on states to provide appropriate assistance to families. Article 18 for example outlines that states will give “appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities”. This includes the obligation on states to ensure access to child-care services and facilities. Article 26 refers to the right of children to benefit from ‘social security’ (social welfare) and states must take into account “the resources and the circumstances of the child and persons having responsibility for the maintenance of the child”.

It is also important that the CRC refers to the obligation on states to provide assistance for disabled children appropriate to the child's circumstances (Article 23). Article 19 outlines the obligation on states to provide for children who have experienced neglect and abuse, including through “necessary support for the child and for those who have the care of the child”. Kinship care children disproportionately have disabilities and have often been abused and neglected in the past (see e.g. NFJO, 2019). This means that on average they require greater access to services relating to education and counselling compared to the general population. Without providing adequate access to financial and other support for this, states are failing to uphold Article 6, the right to life survival and development of kinship care children.

2.3 Issues concerning the right of children to be heard and access to justice

CRC Article 9 refers to the fact that children may need to be separated from parents in their best interests. In these circumstances, “all interested parties shall be given an opportunity to participate in the proceedings and make their views known.” As noted above, kinship carers frequently do not have access to legal advice or legal representation to engage in the necessary legal proceedings. As they are often from disadvantaged backgrounds, they usually do not have the means to pay for this themselves. This is clearly contrary to Article 9. It has also been found that social workers generally require greater training in kinship placement (NFJO, 2019).

It is also crucial that children themselves are adequately heard in legal proceedings affecting them and that they are consulted in relation to any family arrangement (see e.g. Daly, 2018). There is little research into the views and experiences of children in kinship care (for example in the England context see NFJO, 2019). States must do more to ascertain the views and experiences of children about kinship care.

2.4 The principle of non-discrimination

Article 2 enshrines the right of children to freedom from discrimination irrespective of the child's or parents'/guardians': "race, colour, sex...disability, birth or other status". There are numerous areas where this is relevant to kinship care families.

Discrimination against kinship care as opposed to other forms of alternative care

A major issue of discrimination for kinship carers is that they usually cannot access financial assistance equal to that which is paid to 'stranger' foster carers. Also the assistance they receive will frequently be determined by the way in which a child came to be in their care, rather than the actual needs of the child.

In England for example children who are legally in the care of the state ('looked-after' children) will have additional supports, for example faster access to counselling and education services than the general population. Yet kinship care children without this status, though they will have experienced the same traumatic circumstances (e.g. loss of birth parents, possibly having been abused or neglected), do not have this enhanced assistance (see e.g. NFJO, 2019).

In Scotland, the government was convinced by human rights arguments in 2014 that looked-after children in kinship care should attract the same support as looked-after children in stranger care (Equality and Human Rights Commission, Scotland, 2015). This is currently not the situation in Ireland, where kinship care is still not formally regarded as a form of alternative care.

It is therefore important that the Committee on the Rights of the Child explicitly emphasise that assistance for children in kinship care should be based on their needs rather than their legal status – this could be acknowledged to be discrimination under the heading of 'other status' for the purposes of CRC article 2.

Other discrimination issues regarding kinship care

There are important demographic issues to consider. The vast majority of kinship carers are women. Also, kinship care is disproportionately experienced by non-white children in England. The 2011 census indicated that nearly one in three (32%) children growing up in kinship care in England were non-white (this is disproportionate to the population of children growing up with at least one parent, of whom 24% were non-white).

Another important issue is that kinship care children express that they feel sometimes bullied and discriminated against, because there is such a lack of knowledge about kinship care as described by this child: "Being a kinship kid isn't easy. Sometimes, other kids pick on me because I live with my nan, and not my parents like they do...It can become frustrating having to explain over and over again..." (As told by kin child to KCL, 2021).

3. Recommendations

The Committee on the Rights of the Child could explicitly advocate that an approach be taken by state authorities whereby duty bearers (e.g. the local authority) work together with

kinship care rights holders to find common solutions based on the CRC and other international human rights standards.

It is recommended to the Committee that a specific section on the rights of kinship care children be included in a General Comment on children in alternative care. It is also recommended that the inclusion of the following points are considered by the Committee:

- States should recognise that it is usually in the best interests of the children who cannot be cared for by birth parents to receive continuity of care within their extended family.
- States should ensure that kinship carers receive equitable financial and other support to ensure that they do not face financial difficulties due to taking on the care of the child of another.
- States should refrain from discriminatory treatment of children in kinship care (as opposed to those in state care) when it comes to state support. Provision for children should be based on need rather than legal status.
- Authorities must establish adequately whether it is in the best interests of a child to be in a kinship care arrangement.
- States should ensure that kinship carers and potential kinship carers, as well as the children involved have adequate access to information, legal advice, and legal representation where necessary. The views of kinship care children should be gathered on all matters affecting them, and given due weight.
- States should ensure that kinship care children have adequate access to educational, counselling (including family counselling) and other resources.
- States should ensure the development of the skills and knowledge of children’s social workers (and other relevant professionals) in kinship placement. They should also receive training on children’s rights.
- States should organise campaigns to raise awareness of kinship care, and work to eliminate misunderstanding and stigma associated with it.

Acknowledging at UN level the rights of kinship care families will make the CRC work better at local level, as it will facilitate these families to use children’s human rights to progress the interests of this often forgotten group.

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