

## 2.2 Policy and Guidance Kinship (Family and Friends) Foster Care



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### 1. Introduction and Principles

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On a national level the management and expectations of foster care is clearly regulated and controlled by the need to meet recognised minimum standards. Such standards (relating to training and development, demonstrating competence and most importantly, promoting positive outcomes for children) are aimed at improving service delivery and apply equally to kinship (family and friends) foster carers as they do to mainstream foster care.

The principles that apply to kinship (family and friends) foster care in Devon are:

1. Rigorous consideration will be given to options for care within the child's extended family and networks if he or she is unable to live with his or her parent or primary carers to provide continuity of relationships and networks. This exploration will take place before consideration is given to admitting the child to public care;
2. Not all situations where a child is cared for by relatives or family should or need to be classed as 'formal kinship foster care'. No child/young person should have to become a looked after child for the sole purpose of enabling financial, practical or other support to be provided to the child's carers;

3. In exceptional circumstances, the local authority may make payments from Section 17 funds up to a level of £100, to support a child's placement with relatives or friends as an alternative to receiving them into accommodation, and to act in the best interest of the child in line with the Children and Young People Act 2008. This is in an emergency situation until fostering payment can begin (see flowchart box 4);
4. The local authority will proactively work with families to ensure that the children who are admitted to local authority care are placed with kinship carers, so long as this is consistent with safeguarding and promoting their welfare. The wishes and feelings of the child will also be given due consideration, in keeping with their age and understanding of their situation. Where objections are raised by persons with parental responsibility, serious consideration should be given as to the viability and management of the arrangement;
5. The local authority will give active consideration to whether a child's needs will be best met by their permanent placement with a kinship carer, if they are unable to return to parental care within a reasonable time-scale;
6. Legal alternatives to kinship (family and friends) foster care will be considered early in the planning process for a child, for example the possibility of a **Special Guardianship Order**/Residence Order;
7. If it has been agreed that family or friends need to be permanent foster carers for a child in care of DCC, then a full fostering assessment and panel approval will need to take place;
8. All kinship carers will need to meet the full standards and expectations placed upon them by the national minimum standards for fostering and CWDC requirements. These should be considered from the early stages of the viability assessment (the children's SW may need to consult the Kinship Service);
9. The fostering panel will consider each kinship (family and friends) foster care assessment against the national standards, with consideration also being given to the established relationship between the child and the prospective carers.

## 1.1 Definition and Scope

For the purpose of this policy and guidance, kinship care (or family and friends care) is defined as the full time nurturing and protection of children (living apart from their birth parents) by their relatives and friends.

Kinship Care is used to describe all arrangements where the local authority is involved in providing a service to children and families in partnership with persons previously known to the child.

Care provided by family or friends will broadly fall into three categories:

1. A private arrangement made by the family, where the local authority is not directly involved in supporting the care arrangement, unless the arrangement constitutes private fostering under section 66 of the Children Act 1989.

2. An informal care arrangement, where the local authority is involved in setting up and supporting the placement outside of the looked after children system. Periodic Section 17 payments may apply. Some of these placements will fall within private fostering arrangements.
3. A formal arrangement where the local authority is involved in supporting the placement, the child is regarded as a looked after child under Section 20, 31 or 38 Children Act 1989 and the family/friends are approved as foster carers. Prior to approval the carers may be paid a weekly Section 17 allowance. The prospective carers can be paid the appropriate fostering allowance from the time of the joint visit between the Child Social Worker and Kinship Social Worker, if it is agreed that the placement is viable.

Kinship care arrangements may be made for children under the following sections of the Children Act 1989:

- Section 17 - Provision of advice and support, including financial support
- Section 20 - Provision of accommodation by agreement
- Section 31 - Provision of accommodation under a Care Order
- Section 8 - Placement under a Residence Order

Children subject to a Special Guardianship Order made under the provisions of Adoption and Children Act 2002 may also be placed with kin.

This policy defines how Devon understands these arrangements and translates them into practice. It also sets out our obligations to carers under the Fostering Regulations and outlines the links between kinship (family and friends) foster care and other types of care arrangements, including private fostering.

## 2. National Context

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Positive work undertaken by **BAAF (British Association of Adoption and Fostering), Fostering Network** and the DCSF (Department for Children, Schools and Families) seeks to raise standards in relation to kinship (family and friends) foster care. This includes:

- Requiring local authorities to treat approved kinship foster carers as they would mainstream carers, for example in respect of financial remuneration (allowances/fees), or access to support and training
- Applying national standards to all types of foster care, intended to raise standards of care and promote positive outcomes for children
- Draft Statutory Guidance for Local Authorities on Family and Friends Care 2010

Legal challenges to local authorities have been made by kinship (family and friends) foster carers and others, and subsequent judgements made which reinforce the need for fair and equitable systems to support all types of foster care (for example Mr Justice Munby's ruling in respect of Manchester Council, 2001).

### 3. Devon Context

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Kinship carers in Devon may choose to apply for a **Special Guardianship Order** in respect of the children in their care. We should be proactive in the use of such orders in achieving permanence. If the LA is supporting the SGO then support packages are available by negotiation. In most circumstances carers have a right to apply for such orders and this should be supported, **i.e. if carers do not meet the standard for SGO then they will not meet the standard for fostering.**

Historically, Devon has sometimes flexibly used powers under Section 17 Children Act 1989 to support children's placements with family and friends. These placements have been subject to variable arrangements in request of financial support, advice and information and direct social work intervention, and have continued for varying periods of time. It is the intention from the implementation of this policy to use Section 17 financial support as per Children and Young People Act 2008 where it is the family's solution for the care of the child that is being supported, and also in circumstances requiring SW intervention (Safeguarding). This will prevent the improper use of Section 20, which has required the carer to be formally approved as a foster carer – in some cases against their will.

### 4. Legal Framework

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Kinship Foster Care is covered by the following legislation:

Children Act 1989

Children Act 2004

Care Standards Act 2000

Fostering Services Regulations 2002

The Boarding-out of Children (Foster Placement) Regulations 1988

Children and Young People Act 2008

Other areas of legislation may also impact, depending on the circumstances of the case, for example that related to information sharing, human rights and anti-discrimination.

#### 4.1 Powers and Duties

The following statutory powers and duties provide the legal basis for local authority involvement in a range of kinship care arrangements.

##### 4.1.1 Children in Need

The Children Act (Section 17(1)) CA 1989) placed a general duty on the Local Authority to safeguard and promote the welfare of children within their area who are in need and so far as is consistent with their welfare, to promote the upbringing of children by their families by providing a range and level of services appropriate to their needs.

##### 4.1.2 Accommodation of Children

Local authorities shall provide accommodation for a child in need who appears to them to require it as a result of there being no person with parental responsibility for him, or because s/he is lost and

abandoned, or because the person who has been caring for him is prevented from providing suitable accommodation or care.

(Section 20 CA 1989)

#### **4.1.3 Restriction on Duty to Provide Accommodation**

A local authority may not provide accommodation under this section for any child if a person with parental responsibility is willing or able to provide accommodation for the child or arrange for it to be provided. This should be used within the spirit of the legislation, i.e. a voluntary arrangement, not as a means of coercion.

(Section 20 (7) CA 1989)

#### **4.1.4 Provision of Residence Order Allowances**

Where a child lives, or is to live, with a person as the result of a residence order, a local authority may make contributions to that person toward the cost of the accommodation or care of the child, except where the person is the parent of the child or the husband or wife of the parent of the child.

(Children Act 1989 Schedule 1 Para 15). The decision regarding the payment of a Residence Order Allowance will be made at CAPP (see [Children's Area Placement Process Procedure](#)).

#### **4.1.5 Special Guardianship Orders and Allowances**

Financial support may be provided:

- a. To facilitate arrangements for a person to become the special guardian of a child where the local authority consider such arrangements to be beneficial to the child's welfare; or
- b. To support the continuation of such arrangements after a special guardianship order is made. (Special Guardianship Regulations 2005, Section 2 (6)).
- c. Carers will be informed that up to two years' funding will be provided upon the making of a SGO.

This applies to both looked and non-looked after children and the decision to grant an allowance will be made at Children's Resource Panel.

See [Special Guardianship Policy](#).

#### **4.1.6 Private Fostering Regulations**

Every local authority has a duty to satisfy itself that the welfare of children who are privately fostered within their area is being satisfactorily safeguarded and promoted and to offer advice to the private foster carers as appears to the authority to be needed. (Section 67 (1) Children Act 1989) Local authorities also have a duty to promote public awareness of the need to notify private fostering arrangements. The LA can/may offer mediation in such arrangements to avoid formal intervention i.e. Section 20. Family Group Conference may also assist.

See [Private Fostering Policy](#).

#### **4.1.7 Immediate Placement of a Child with a Relative or Friend**

Regulation 38 of the Fostering Services Regulations 2002 states that where a local authority is satisfied that the immediate placement of a child is necessary, they may place the child with a person who has not been approved as a foster carer for up to six weeks providing they have:-

- interviewed the person and are satisfied they are a relative or friend of the child;
- inspected the premises;
- obtained information about other persons living in the household;
- made a written agreement with the person to carry out specific duties;
- satisfied themselves that this is the most suitable way of performing their duty to safeguard and promote the welfare of the child.

Placements should not be made in situations involving allegations of sexual abuse or serious physical injury. Any placements made under Regulation 38 must be agreed by the service area Operations Manager, who should complete an emergency placement form with their signature. An application to Children's Resource Panel, completed by the child's Social Worker, is made retrospectively.

Any carers who are clear at this stage that they do not wish to pursue a residence order, supervision order or an SGO should not continue to care for the child. Neither should any prospective carers whom the Kinship team do not believe would pass a fostering assessment. In these situations the child should not be placed or should be removed.

No placement of any child, for whom an adult with parental responsibility objects to the placement with kinship carers, should be made without careful consideration being given, for example through family group conferencing.

NB: In April 2011, Regulation 38 will be replaced by Regulation 24 and Regulation 25 of the Care Planning, Placement and Case Review Regulations 2010.

#### **4.1.8 Duty to Place with Relatives and Friends**

The local authority also has a duty to consider placing children with appropriate relatives or friends, as an alternative to stranger foster placements.(Section 23 (6) Children Act 1989).

NB. If placed with relatives under Section 23 (6) the child will remain looked after.

It is important to be clear from the outset (in writing for the family) about the legal status of the placement. The child's social worker should seek legal advice if there is any scope for misunderstanding.

The prospective carers should not be specifically told to seek their own legal advice at this stage, to prevent unnecessary costs accruing without clarity on funding.

## **5. Informal (Private) Kinship Care – Made by Parents With or Without a Subsequent Level of Local Authority Support and Assistance**

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Children living with grandparents for example, or aunts, uncles or siblings under arrangements made between the parent and that immediate family member are not looked after children. In these circumstances the LA need not be involved.

Types of informal kinship care include:

- Children placed with close relatives by parents at the parent's own initiative
- Young people age 16+ who are living with a relative under their own volition

Where child protection concerns exist, careful consideration must be given to the legal framework being used to protect the child.

## **6. Formal (Public) Kinship Care Arrangements**

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Children placed under formal (public) kinship care arrangements are in the care of the local authority.

Children who are subject to interim or full Care Orders can only be placed under this category.

Examples of types of placement within this category:

- Placements with relatives and friends under Regulation 38 of the Foster Service Regulations
- Placements with relatives and friends who have been formally approved to care for a specific child under Regulation 28 of Fostering Services Regulations 2002
- Arrangements for Looked After Children to stay overnight with relatives and friends on a regular basis, as part of the child's care plan (although again, sometimes it is possible to use alternative legal routes such as overnight stays with family as part of a Section 8 Contact Order

## **7. Implications of National Minimum Standards for Fostering**

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All foster carers assessed and approved by the local authority must be able to demonstrate that they meet the national minimum standards for fostering, which includes, for example, reaching a required level of competence in child care (evidenced in the CWDC work book) and attending support groups and training. Carers also need to have homes that are suited to the fostering task, where consideration has been given to health and safety and safer caring.

Family and friends offering a home to children under a kinship fostering arrangement who are also smokers will be asked to comply with Devon County Council policy on smoking in foster homes. Very careful consideration should be given to children under five, as per DCC policy.

It is important to discuss all of these issues with the child's prospective carer(s) prior to any fostering assessment being undertaken, so that the prospective carer(s) have a full understanding of what is being asked of them over and above their role as the grandparent or relative of the child. Advice can be obtained from the Kinship Fostering Team to assist with this process. It may be that other legal routes are more appropriate, for example the seeking of a Special Guardianship Order.

As foster carers, approved kinship carers are entitled to the full boarding out allowance for the child(ren) plus a Tier 1 payment. There should be no occasion when a nominal figure is paid over a long period of time to support a kinship arrangement – if ongoing financial support is required and circumstances are appropriate, funding can be paid via the fostering allowances further to a full Form F (i.e. BAAF Assessment document for approval of foster carers and adopters) assessment and approval as foster carers.

## **8. Application for Assessment of Kinship Carers**

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See [Assessment and Approval of Foster Carers Procedure](#).

In the first instance when considering whether a family member is a possible carer for a child, a viability assessment must be undertaken. This gives an early indication as to whether there are obvious issues that would preclude a potential carer, and conversely, recognises the potential strengths of the placement. A pack including the viability assessment is available from the Fostering Clerk, based at Parkers Barn, Totnes on extension 6064. The viability assessment would be carried out by the child's Social Worker. Consultation is available from the Practice Manager and Social Worker for kinship care, also based at Parkers Barn.

If the outcome of the viability assessment is positive, then this will be sent to the Kinship Service for further assessment.

NB: Please note that the viability assessment will be placed as information to the county Fostering Panel and will form part of the information required to approve under regulation 38.

**This process will apply where children are/will be placed with Family/Friends Carers either: under S.20 or, at outset of/during ICO proceedings. Not relevant for children placed under Private Fostering arrangements.**

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The general duty to keep a child within its family where possible is recognised within these policies and procedures. Where the Local Authority have played a major role in the making of a placement with family and friends, the child should be treated as being provided with accommodation by the Authority, unless they have come to a different agreement with the carers.

Practice Managers need to exercise caution regarding quick, emergency decisions to place with families. They need to consider the potential for collusion with family and the information available at the time. **Placements should not be made in situations involving allegations of sexual abuse and serious physical injury or where they are opposed by people with PR.**

Practice Managers must consider the status of the placement.

Does the child meet the threshold for accommodation? Eg: if this family/friend being considered were not available, would you be seeking an order/foster placement to safeguard the child?

Is there a significant harm issue?

If not, CYPS are facilitating a family arrangement and not making a S20 placement. The LA still have a duty to ensure the welfare of the child in facilitating this and need to carry out basic checks (police/LA records), but no fostering assessment is necessary.

If yes, this is a S20 placement and Reg 38 basic checks need to be completed (see procedures/policy) through completion of a viability assessment.

① Agreement required from child's OM to place child with Kinship Carers – **within 24 hours**. OM to sign emergency placement form. Child's SW to complete K1 'Request for Service' Form for next Resource Panel. (For emergency/unplanned placements, K1 to go to Resource Panel retrospectively.) Child's SW & Kinship SW to make recommendations to child's PM and Kinship PM re: way forward i.e. 1) confirm child/yp needs to be in care of LA; 2) there are no other legal routes which might be more appropriate. Child's PM, in consultation with legal advice, to consider alternative orders; 3) carers are willing to be approved as foster carers; 4) arrangement likely to meet NMS. This case is then taken to Resource Panel. any dispute at this stage should be resolved by child's OM and Fostering OM with legal advice as appropriate prior to representations at Resource Panel.

③ Child's SW to complete Placement Information Record and Placement Agreement Form. If child to be placed immediately, child's SW to undertake basic checks and complete written agreement for placement. For all adults in household, full police checks (CRBs) will be completed by Fostering. These forms are on CF6.

② Child's SW to complete & forward viability assessment to Kinship Service – **within 10 working days**. After 6 weeks, placement will become illegal if fostering service have not assessed.

④ Child's SW to consider referral to FGC. Joint visit from child's SW & Kinship SW to prospective carers. Kinship SW to take Application to Foster pack, to be completed by carers, including medical and CRB, & referred to Kinship Service – **within 10 working days**. Once the application to foster has been received by the Kinship Team, and following the visit by the Kinship SW, and providing authorisation has been obtained, payments can begin. The child's SW to complete finance forms. The Kinship Team will present a Viability Assessment and Reg 38 Assessment to Fostering Panel for **Temporary Approval**.

⑤ Kinship Service receives and processes carers application for those few carers who will need to be approved as long-term foster carers as part of the permanency plan.

⑦ If proposed kinship placement is not appropriate or viable then child's SW to refer to One Stop Shop for alternative placement. **If child already in kinship placement, child's SW to notify all involved as appropriate of intention to move child.**

⑥ Where Reg 38 runs alongside SGO application, the Kinship SW & child's SW need to agree which components of assessment they are completing. Temporary approval carers need to understand that information shared for the SGO & Reg. 38 Assessments is likely to be required by Court & Foster Care Panel, to keep Kinship Service informed and involved with the legal process.

## 9. Registration and Deregistration of Formal Kinship Carers

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All completed formal kinship care assessments (whether Regulation 38 or full Form F) will be presented to the Fostering Panel (see [Fostering Panel Procedure](#)). The process of panel recommendation and agency decision maker decision remains the same as that of mainstream carers.

One area of difference between approved kinship and mainstream carers is that kinship carers have been assessed with a known child (or children) in mind, and so information should be presented to panel in relation to the child.

The registration for kinship carers is specific to the named child – kinship carers are not able to take stranger placements unless they undertake a further assessment and are approved on a mainstream basis.

Because the approval is specific to the child, it also ends at the time that the child reaches eighteen years of age, or leaves the placement. Whilst the carer approval automatically lapses at that point, it is still necessary to present the deregistration to the fostering panel as this ensures that the carer(s) name(s) are removed from the list of approved carers, and from associated lists (such as that relating to carer insurance, the Fostering Network and so forth). A report from the supervising social worker will suffice for deregistration purposes – it is not necessary for the carer to submit a letter of resignation as would be the case for mainstream carers.

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## Descriptions of Placement or Support Types

Section 17 Children Act 1989	Section 20 Children Act 1989	Full Care Order Section 31 Children Act 1989	Section 66 Children Act 1989 Private Fostering
<p>The child is in need. There is an option for the child to be cared for by a member of his/her extended family. Assistance, advice and/or financial aid would prevent the child becoming looked after.</p> <p>Sect 17 Payments:</p> <ul style="list-style-type: none"> <li>• Safeguarding or completion of assessment</li> <li>• Short term</li> <li>• Agreed amount</li> </ul> <p>Family arrangement not formal placement. e.g. 'cooling off period' situation e.g. to allow time for benefits or financial arrangements to be put in place (Note: Families can make informal arrangements for the care of children by immediate family members e.g. grandparents aunts/uncles without any need for local authority intervention, provided that there are no concerns)</p>	<p>There is evidence to demonstrate that the child is in need of accommodation by the local authority.</p> <p><b>Note: In the past workers have apparently intimated to parents that their child should be cared for by family member or legal action will be taken by the local authority.</b></p> <p><b>This not an option.</b></p> <p>If child under Sec 20:</p> <ul style="list-style-type: none"> <li>• Carers must be fully approved as foster carers and satisfy fostering standards</li> <li>• Viability assessment and Regulation 38 assessment undertaken in early stages – may lead to full Form F or perhaps SGO/Residence Order application as an alternative to care.</li> <li>• Consider SGO/RO application as an early alternative to care order</li> </ul>	<p>Legal action has been taken to safeguard the child and an interim or full care order is in place.</p> <p>(Early consideration should be given to use of an interim supervision order or interim residence order. Carers can consider an SGO or RO if they do not wish to be foster carers.</p> <p>Carer must be approved foster carer and satisfy fostering standards if child subject to interim or full care order. Consider SGO/RO early as an alternative to care order.</p>	<p>Should be an arrangement between parents and another person – not an arrangement 'brokered' by the local authority as an alternative to care. Parent needs to retain and exercise PR. But for teenagers who arrange their own placements – legal status of young person to be considered and confirmed.</p> <p>Parent and carer need to notify the LA if the child will remain past 28 days. LA may provide Section 17 funding.</p>

<p>Social Work Actions</p> <ol style="list-style-type: none"> <li>1. Assessment</li> <li>2. Direct work with family regarding possibility of rehabilitation or permanency.</li> </ol>	<p>Social Work Actions to include:</p> <ol style="list-style-type: none"> <li>1. Assessment of situation to take place (via Core Assessment)</li> <li>2. Direct work with family regarding possibility of rehabilitation</li> <li>3. Viability assessment of kinship care arrangement</li> <li>4. Regulation 38 assessment followed by Full Form F. Only in exceptional circumstances would kinship carers need to remain as foster carers, i.e. family management issues that could place the child at risk. If the situation is of such concern, is the long-term placement viable?</li> </ol>	<p>Social Work Actions to include:</p> <ol style="list-style-type: none"> <li>1. Full Form F assessment of carers required if there is no other alternative but for the child to remain on CO</li> <li>2. Where the plan is for permanency, consider the option of SGO or RO as an alternative to CO. <b>If there are no family management issues then the child does not need to remain on CO.</b></li> </ol>	<p>Social Work Actions to include:</p> <ol style="list-style-type: none"> <li>1. Consult Private Fostering Policy and seek guidance from private fostering team</li> <li>2. Refer child to private fostering team via threshold unit for assessment of arrangement</li> </ol>
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