

Submission to the Joint Oireachtas committee on the General Scheme of the Social Welfare (Amendment) Bill 2023

Introduction

As a kinship carer to my four orphaned nieces, I welcome the opportunity to contribute to the Joint Oireachtas committee on the General Scheme of the Social Welfare (Amendment) Bill 2023. With 11 years' experience as a kinship carer, I have considerable insight into the many challenges kinship families face. As founder of Kinship care Ireland, I am dedicated to advocating for increased supports so no kinship family should have to care for vulnerable children alone.

Kinship care involves the full-time care of children, by grandparents, older siblings, aunts, uncles, cousins, other relatives, or close friends of the family, when a parent is unable to fulfil their role. It occurs for many reasons, including the death of a parent, drug or alcohol misuse, abandonment, neglect or abuse, ill health, or imprisonment. Kinship carers are mainly older and poorer grandparents who suffer from a range of health issues. Research indicates there are approximately 12,000 children in kinship care in Ireland.

Despite this, kinship families are an invisible family type. Access to essential legal, financial, health, educational and emotional support remain a huge challenge. Kinship care often arises in response to a crisis, meaning there is no preparation. Due to the complexity of reasons that can lead to kinship care, kinship caregivers face the emotional, physical, and financial strain of raising children who have experienced the grief of parental death or separation. Many children in kinship care face complex issues such as trauma, neglect, loss and attachment. They are an invisible and vulnerable group as their needs are often overlooked.

Kinship families have to deal with a wide range of issues including sudden change of family composition and size, housing issues, poverty, ill health, emotional challenges, parenting issues, stigma and social isolation. Many kinship carers experience serious health issues and face financial disadvantage as they often have to give up work or use their pension to raise grandchildren.

*'Children who cannot/do not live with their parents are often placed with other family members (where this is possible and in the best interest of the child) rather than taken into the care of the State.'*¹

Although kinship care may involve Tusla social workers, most kinship placements are generally classified as informal kinship care or 'private family arrangements,' with no explicit recognition, supports, or services available through the alternative care system.

Benefits of Kinship Care

The importance and benefits of kinship are well documented. Valerie O' Brien of UCD concluded that 'The outcomes for children in Kinship Care are generally seen as positive in terms of identity formation, stability of placement, behavioural and mental health outcomes, enabling siblings to live together and child protection.'² Despite these internationally acknowledged benefits, kinship care remains unrecognised and undervalued in Ireland.

Kinship care ;

- Provides stability and continuity, enabling children to live with people they know and trust
- Reinforces children's sense of identity and belonging
- Increases the likelihood that siblings can remain together
- Assists children to maintain relationships within their birth family, kin, and culture, increasing the potential for reunification

Supporting Kinship Care means that these benefits can be sustained and supported for the longer term. Improved financial security through accessing entitlements reduces disadvantage and poverty.

The Guardian's payment (formerly Orphans allowance or payment)

The *Guardian's Payment* is the only regular payment available from the State, to provide direct financial support to alleviate the additional financial burden which is experienced by relatives who take on the care of children and young people. It can be contributory or non-contributory. The current rate of pay is €205. There is no allowance for children over 12 despite the increased costs of raising an adolescent. The majority of those in receipt of the Guardian's payment are over 65

As of 31st January 2022, there were 2,590 children living with 1,768 carers, in receipt of the Guardians payment, from the Department of Social Protection, of whom the majority (84.5%) are women, who care for individual children, and multiple sibling groups of up to six children.

31% of carers in receipt of the Guardian's Payment are over the age of 60, whereas most of the children they care for, are over 12 years of age . There has been an increase of 30% in the number of children for whom the payment is made since 2017, which indicates that the practice of informal kinship care, is growing.

Expenditure Review of the orphan's payment 2003

In 2003 the Department of carried out a review of the guardian's payment. This followed increase of 54% in the period 1999-2001 in claims by foster carers for the orphan's allowance, in addition to other discretionary payments from the Department of Social Protection, whilst also in receipt of the foster care payment from the Health board.

In August 2001 there was a change in legislation so foster carers could no longer claim the orphan's payment and the foster care payment was increased by up to 260% to €325 >12 years and €352 >12 years. In contrast in the same period 2001-2023, the Guardian's payment has increased by 154% to €205.

This 2003 expenditure review made several key observations and recommendations which were to improve the operation of the orphan's allowance. However, 20 years after its publication, these recommendations need to be re-visited to ensure adequate income support and welfare for children in kinship families.

The issues covered in this submission are as follows:

- Eligibility for the Guardian's payment
- Child benefit and the Guardian's payment
- Rates of Guardian's payment
- Guardian's payment and additional supports or entitlements
- Introducing kinship care leave benefit similar to adoptive leave benefit

Eligibility for the Guardian's Payment

Definition of Orphan

The previous definition of orphan was amended and extended by the Social Welfare Act, 1995, to make a 'very significant' change, so that a child can be regarded as an orphan, where both parents, although known, have abandoned the child, or have failed to provide for him or her.

Section 2 (1) of the Social Welfare (Consolidation) Act, 2005 which defines an 'orphan' as a qualified child –

(a) Both of whose parents are dead, or (b) One of whose parents is dead or unknown or has abandoned and failed to provide for the child, as the case may be, and whose other parent (i) is unknown, or (ii) has abandoned and failed to provide for the child where that child is not residing with a parent, adoptive parent or step-parent.

However, a key issue is the use of the term abandonment and failed to provide rather than 'unable to care'. The current criteria means there are kinship carers, in cases where the child has one or more parent still living, who are currently unable to access financial assistance to help them care for a child, even though, like foster carers, they have taken on primary responsibility for the day-to-day care of a child who is unable to be cared for by their parents

The 2003 Expenditure review of the Orphans allowance states;

'Definition of abandoned It is proposed to introduce a definition of the term "abandoned" into the legislation governing OCA and ONCP to the effect that "a child is not regarded as abandoned if the parent knows and approves of the steps that someone else is taking to look after him/her.'

However, over the past 10 years a number of appeals have been documented the social welfare appeals site ³ regarding eligibility for the guardian's payment and many centre on the definition of abandonment. Often, the social welfare Appeals Officer considered that abandonment and failure to provide must be held to be more than merely financial, it includes the failure of a parent's duty to provide for the emotional and physical necessities of life.

The 2003 Expenditure review of the Orphans allowance states;

It should be noted also that while the term 'orphan' is defined in detail, terms such as 'abandoned or refused or failed to provide' are not so defined, thereby leading to complexities in processing and deciding entitlement.

Administrative complexities in the treatment of applications have arisen due to the lack of definition of certain terms within the legislation governing the schemes' pg. 4

Although the current number of applicants for OCA and ONCP payments is comparatively small, the amount of worker hours expended upon the schemes is disproportionately large. This is due to the complexities and difficulties involved in interpreting and applying the current terms 'abandoned or refused or failed to provide' pg. 26

*'It is considered that replacing the term "failed to provide" with the term "unable to provide" may make the situation more straightforward. **For example, a person may be unable to provide for their child/ren due to illness or addiction (this is distinct from failing to provide).***

Recommendation

- Review the current operational guidelines for the Guardian's payment.
- Replace the term 'abandoned and failed to provide' with the term "unable to provide".

Child benefit and the Guardian's payment

Despite kinship carers being in receipt of child benefit for their grandchild, niece or nephews or young sibling, kinship carers often face considerable obstacles to getting the Guardians payment. Linking the child benefit to the Guardian's payment would improve the process.

The 2003 Expenditure review of the Orphan's allowance states;

'It would be doing a disservice to potential claimants of OCA and ONCP if genuine cases were allowed to pass by without being acted upon at the earliest possible opportunity. In this regard, it is noted that most, if not all, potential claimants are also claiming Child Benefit for the child. Child Benefit is often taken as evidence that the child is indeed residing with the guardian. Therefore, it would be appropriate to utilise this information as a 'pick-up point' for potential claims. '

Such a procedure would also make it possible to estimate the size of the target group more accurately using the number of children described as "not the claimant's own" as an indicator.' Pg 27

Recommendation

- Devise administrative procedures whereby a person who applies for Child Benefit in respect of a child who is "not his/her own" would be notified that s/he may be entitled to claim Guardian's payment for that child.

Rate of payment

A wholly inequitable disparity exists, between the maximum Guardian's Payment of €205 per week and the payment of €325 per week for children from 0-12 and €352 for children over 12 in foster care,

The payments caregivers currently receive are not considered fit for purpose and are not adequate to cover the costs of caring for a child – the current levels of payments are incompatible with achieving the objectives and principles for the caregiver financial assistance system. In particular, the principle that financial assistance for caregivers should provide for the reasonable costs of caring for the child. The literature points to inadequate financial assistance being a barrier to caregiving, both in terms of caregiver satisfaction and a caregiver's perceived ability to provide a loving, nurturing and enriching environment.

An adequate base payment that covers the costs of caring for a child appears to be a critical factor in providing placement stability, particularly for kinship carers. It also enables carers to better meet children's needs and subsequently improve child wellbeing. Research has demonstrated the risks of living in poverty and poor outcomes relating to health, education, employment and wellbeing. Many kinship carers may be looking after children as part of low-income households where resources are already stretched

The level of financial assistance can be a significant factor in a caregiver's decision to continue to provide care. The crucial role of kinship carers in receipt of the Guardian's payment in reducing the need for children to enter State care is not well-recognised or valued. This is reflected in the differing levels of assistance provided in comparison to foster carers.

The 2003 Expenditure review of the Orphan's allowance states;

'The adequacy of the Guardian's payment should be reviewed at regular intervals.'

'It is recognised that families incur additional expenses when they take a child into their home.'

'Serious equity concerns arise that would increase the perception of a two-tier caring system, whereby foster carers receive substantially higher levels of State support than other guardians.' 'In addition, it is important that equity in similar care situations should be maintained.'

‘There is a lack of information in relation to the level and risk of poverty faced by ‘orphaned’ children although it is recognised that such children represent a particularly vulnerable group in society.’¹

Recommendation

- Increase rate of Guardian’s payment on par with foster allowance
- Introduce a rate for adolescents to reflect the additional costs

Guardian’s payment and additional supports or entitlements

Receipt of the Guardians payment does not trigger additional supports or entitlements. Unlike children in foster care, children in receipt of the Guardians payment do not have a direct entitlement to a medical card, SUSI grant and other educational supports. Kinship carers are means tested for these supports and these carers are also unable to access an additional qualified child payment and foster carers can.

The 2003 Expenditure review of the Orphan’s allowance states;

‘It is recognised that liaison with the Department of Health and Children is essential in addressing many of the issues discussed in this Review.’

Recommendation

- Establish an Interdepartmental committee to examine and provide improved pathways to access entitlements to ease the burden of care for kinship families.

Kinship Care Leave

Kinship carers often have to cease working as a direct result of trying to cope with their caring responsibilities, towards the children and young people they had taken in. In the case of parental death this is a permanent role in caring for an orphaned child. Loss of income from employment and a break in or end to participation in the labour market, can be a significant issue for Kinship carers, particularly older people and contribute to poverty and disadvantage.

Kinship carers should be entitled to a period of paid leave equivalent to maternity or adoption leave, or parent’s leave, when they take on the care of a child. This would give them time to manage the upheaval in their own lives and support the transition for children, keeping their job and reducing the risk of having to give up work. This leave should be accommodated, based on evidence of the incapacity of the parent to look after the child.

Recommendation

- Introduce kinship care leave benefit on par with adoptive leave benefit

Conclusion

There is an opportunity to make significant progress in improving support for kinship caregivers and reducing disparities in levels of assistance between caregivers.

The Guardian's Payment is intended to benefit children who are deprived of the care of their parents. However, the application of the current operational guidelines effectively denies the payment to children who are clearly being cared for by relatives on a full-time basis, in circumstances which could be objectively confirmed and corroborated.

An urgent review of the current Operational Guidelines for the Guardian's Payment is needed, to provide alternative Statutory guidance, to ensure the eligibility of children and carers in circumstances where there is evident non-performance of parental duties, and/or where ongoing parental care is unavailable, and where the child is clearly being cared for on a full-time basis, by another adult.

Summary of recommendations

- Review the current operational guidelines for the Guardian's payment.
- Replace the term 'abandoned and failed to provide' with the term "unable to provide".
- Devise administrative procedures whereby a person who applies for Child Benefit in respect of a child who is "not his/her own" would be notified that s/he may be entitled to claim Guardian's payment for that child.
- Increase rate of Guardian's payment on par with foster allowance
- Introduce a rate for adolescents to reflect the additional costs
- Establish an Interdepartmental committee to examine and provide improved pathways to access entitlements to ease the burden of care for kinship families.
- Introduce kinship care leave benefit on par with adoptive leave benefit

Benefits

These changes would make progress towards ;

- Improving levels of financial assistance available to support child wellbeing
- Reducing disparities in types and levels of assistance provided to kinship carers inside and outside the State care system
- Enabling kinship carers to access more support, without a child needing to enter state care.
- Contributing to the child poverty units' vision for Ireland to be the best place to be a child.
- The development of a policy on the rights of children in informal kinship care as required by the UN committee on the rights of the child.

Contact:

Kinship Care Ireland (KCI) hosted by TREOIR is the only body in Ireland specifically working with kinship families. KCI aims to promote the recognition, rights and entitlements of children, young people and families in kinship care, through the provision of information, supports, services and advocacy for systems and legislative change.

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Further information on Kinship care

Treoir : <https://www.treoir.ie/kinship-carers/>

Website: <https://www.kinshipcare.ie/>

Facebook : <https://www.facebook.com/kinshipcare.irl>

Twitter: <https://twitter.com/KinshipcareIrl>

Instagram: <https://www.instagram.com/kinshipcareireland/?hl=en>

References

1. *Department of Social and Family Affairs Expenditure Review of the Orphan's Contributory Allowance (OCA) and Orphan's Non-Contributory Pension (ONCP), 2003.*
2. Valerie O'Brien <https://www.ucd.ie/t4cms/Kinship%20Care%20-%20Enhanced%20Support%20Needed.pdf>
3. <https://www.gov.ie/en/collection/ae6ada-news-and-publications-from-the-social-welfare-appeals-office/#2010>
4. <https://www.gov.ie/en/publication/ac3823-operational-guidelines-guardians-payment-non-contributory>
5. <https://www.gov.ie/en/organisation-information/e4517-social-protection-annual-statistics-report-archive/>