

Rethinking Kinship Care in England and Wales: A Critique of Law and Practice

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Abstract

Kinship care (also known as connected persons care) in England and Wales has seen a significant increase and used option in care proceedings in recent years, highlighting the need for a comprehensive understanding of its implications and the support required for both the carers and the children involved. Kinship care is an essential part of the safety net for children who are unable to remain in the care of their parents. It is an age long family resource which has provided diverse types of support to family members in need. This paper aims to delve deeper into the regulatory framework and practice of kinship care vis-a-vis the outcomes for children in such care, shedding light on the challenges they face and the potential benefits of kinship care in England and Wales. By examining the background and significance of kinship care, this study seeks to inform policies and interventions aimed at improving the well-being of children in kinship care arrangements. In effect, this article discusses the concept of kinship care and its practicalities or otherwise in England and Wales. It critically considers the benefits and challenges of kinship care and its impact on both the carers and the children cared for. Whilst the article does not aim to provide a solution to practice difficulties, it attempts to provide some insight for practice and policy. Furthermore, it offers a critical assessment and engages the law and policy considerations to the use of kinship care and the support offered. It contributes to scholarship on the subject of kinship care and contends that kinship care is very advantageous for the children therefore practice needs to be unified with policy to support the carers and minimise if not eradicate the challenges particularly the challenge with regards to the provision of support to the caregivers.

Keywords: kinship care, foster care, England and Wales, Family law, child law.

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1.0 Introduction

Kinship care is not a novel occurrence. It is an ancient family resource which provides diverse levels of support to family members in need. Research suggests that kinship-based fostering as a part of informal care is more widespread than residential and institutional care for about 163 million children around the world who are unable to live with their birth parents.¹ Kinship care is quite common in many countries such as Australia², New Zealand³, Ghana⁴, United States of America⁵ and Spain.⁶ In Australia, recent research suggests that among almost 93% of children living in care, about 51% of them get support via kinship care arrangements.⁷ Similarly,

1. J. Leinaweaver, 'Informal Kinship-Based Fostering Around the World: Anthropological Findings' (2014) 8 (3) *Child Development Perspectives* 131
2. M. Paxman, 'Outcome for Children and Young People in Kinship Care: An Issue Paper' (NSW Department of Community Services: *Centre for parenting and research 2006*)
3. M Connolly, 'Kinship Care: A Selected Literature Review' <https://thehub.swa.govt.nz/assets/documents/Kinship.pdf> [last accessed on 31 March 2023]
4. E. Cudjoe, A. Abdullah and M. Y. L. Chiu, 'What makes Kinship Caregivers Unprepared for Children in their care? Perspectives and Experiences from Kinship Care Alumni in Ghana' (2019) 101 *Children and Youth Services Review* 270
5. E. A. Sharda, C. G. Sutherby, D. L. Cavanaugh, A. K. Hughes and A. T. Woodward, 'Parenting Stress, Well-being and Social Support among Kinship Caregivers' (2019) 99 *Children and Youth Services Review* 74
6. C. Montserrat, 'Kinship Care in Spain: Messages from Research' (2012) 19 *Child and Family Social Work* 367
7. Australian Institute of Health and Welfare, 'Child Protection Australia: 2017-18' Child Welfare Series 70 (Canberra: AIHW 2019)

in New Zealand, it was estimated in 2017 that over 2,500 of children are in kinship care placements.¹ Furthermore, a study carried out in Ghana suggests that nearly 70% of children in care are in kinship care with nearly two thirds of them having both parents alive.² Despite the absence of accurate statistics of children living in kinship-based arrangements globally, it is projected that at least 2.7 million children live in residential care around the world.³ To this end, it seems that kinship care is the world's fastest-growing permanence alternative for children who cannot live with their biological parents.⁴

In England and Wales, the awareness of kinship care is steadily improving and the practice becoming an important phenomenon.⁵ Although kinship care is regarded as an age long family resource dating back many centuries, the advent of modern kinship care research in the United Kingdom (UK) can be traced back to researches conducted by Pitcher, Broad and others in the late 90s and early 2000s.⁶ Since then, several studies have been undertaken to examine the effectiveness and efficiency of kinship care.⁷ Hunt has argued that the aspiration to reduce the role of the state and the financial burden to public services as well as the concerns around removing children from their wider communities into foster placements has driven the use of kinship care.⁸ In a research study carried out in 2011 using the 2001 census data, it was estimated that about 173,000 children were living in kinship care in the UK, with 9,200 of that population from Wales.⁹ Similarly, a research conducted in 2017 using the 2011 census data, suggests that there are around 180,000 children growing up in the care of their family and friends in the UK, with 9,560 of the population from Wales.¹⁰ Although a slight increase is noted over a period of six years, it could be inferred that the research demonstrates the steady increase and awareness of kinship care in the UK. Nevertheless, Farmer et al have argued that the figures gained during these research studies should be regarded as estimate as most kinship care arrangements are believed to be without the knowledge of the Local Authority.¹¹ However, a fairly recent study demonstrates that there is a significant increase in the number of kinship carers due to an increase in cases of abuse and neglect and a decline in non-kinship carers.¹² Although, the later research used data from Northern Ireland, its conclusion in terms of the increase appears to be the same in England and Wales.¹³ The outcomes of children in kinship care are mainly judged and discussed in terms of its positive outcomes, however there are some disquiets around the struggles and challenges they face.¹⁴

Conversely, opinions are divided on the importance and efficacy of kinship care. Whilst some commentators argue that the pre-existing bond between the child and relative can promote positive attachment and reduce the trauma the child is likely to face when placed with strangers;¹⁵ others argue that children living with relatives are more likely to experience continued trauma associated with abuse or parental neglect and most importantly, may not receive or are considered not to be eligible for a range of support such as specialised health services support, clothing, holiday, birthday allowances or school related services which are mainly available to

1. Ministry of Social Development <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/cyf/kids-in-care.html> [last accessed on 31 March 2023]
2. Cudjoe (n 4); K. Hampshire, G. Porter, S. Agblorti and A. Albert, 'Context matters: Fostering, orphanhood and schooling in sub-Saharan Africa' (2015) 47 (2) *Journal of Biosocial Science* 141
3. <https://www.unicef.org/protection/children-in-alternative-care> [last accessed on 31 March 2023]
4. Leinaweaver (n. 1); P. D. Shuttleworth, 'Recognition of Family Life by Children Living in Kinship Care Arrangements in England' (2023) 53 (2) *British Journal of Social Work*, 157
5. Shuttleworth (n. 11)
6. D. Pitcher, *When grandparents care* (Plymouth City Council Services Department 1999); B. Broad, *Kinship Care: The Placement Choice for Children and Young People* (Russell House 2001); 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 Care* (Jessica Kingsley 2008); M. Connolly, M. Kiraly, L. McCrae and G. Mitchell, 'A Kinship Care Practice Framework: Using a Life Course Approach' (2017) 47 (1) *BJSW* 87
8. J. Hunt, (2003) 'Family and Friends Carers: Scoping paper prepared for the Department of Health' (Submitted to the Department of Health, November 2001)
9. S. Nandy and J. Selwyn, 'Kinship Care and Poverty: Using Census Data to examine the extent and nature of Kinship Care in the UK' (2013) 43 (8) *BJSW* 1649
10. D. Wijedasa, 'Children growing up in the care of relatives in the UK' Hadley Centre for Adoption and Foster Care Studies (*University of Bristol* 2017)
11. E. Farmer, J. Selwyn and S. Meakings, 'Other children say you're not normal because you don't live with your parents', Children's views of living with informal kinship carers: social networks, stigma and attachment to carers'. (2013) 18 *Child and Family Social Work* 25
12. S. Houston, D. Hayes and M. MacDonald, 'Hearing the voices of kinship foster carers in Northern Ireland: An inquiry into characteristics, needs and experiences' (2017) 7 (1) *Families, Relationships and Societies* 71
13. Children's Commissioner, 'Children in care findings from The Big Ask (2021)' <https://assets.childrenscommissioner.gov.uk/wpuploads/2021/10/ecc-children-in-care-findings-from-the-big-ask.pdf> [last accessed on 31 March 2023]; Welsh Government, 'Experimental Statistics: Children looked after by local authorities April 2021 – March 2022' <https://www.gov.wales/children-looked-after-local-authorities-april-2021-march-2022-html#content> [last accessed on 31 March 2023]
14. M. Kiraly, 'A Review of Kinship Carer Surveys: The 'Cinderella' of the Care System?' (2015) 31 *Child, Family, Community, Australia (CFCA) Information Exchange* 1
15. J. Skoglund and R. Thornblad, 'Kinship care or upbringing by relatives? The need for 'new' understandings in research' (2017) 22(5) *European Journal of Social Work* 435; E. Ariyo, D. Mortelmans and E. Wouters, 'The African Child in Kinship Care: A Systematic Review' (2019) 98 *Children and Youth Services Review* 178

children in the care of the Local Authority.¹ Thus, this paper examines the following issues: (i) whether kinship carers and the children are disadvantaged because the level of support available to them is dependent on their legal status rather than the identified needs of the child, and (ii) whether kinship care placement promotes the wellbeing of the child in terms of providing stability, identity formation, affirmation of the child's self-esteem and continuity of cultural heritage.

2.0. Contextual overview

Around the world, situations arise which may result in parents being unable to either physically or emotionally safeguard their children, hence there may be the need to place such children with relatives or friends.² As stated earlier, kinship care is regarded as a popular practice which has been for centuries and across cultures.³ According to Ronnau and Marlow, kinship care is based on the idea of unity between family and the community utilising the sources of support available.⁴ Crewe and Wilson have opined that most families step in to care for their relatives because it is believed in most societies that it is the responsibility of family members to care for each other and this includes raising relatives' children when the need arises.⁵ This section provides a contextual overview of kinship care in England and Wales, evaluating current literature and research in relation to kinship care around the world with a focus on England and Wales. It discusses the types of kinship care, examines the legal framework underpinning the principle of kinship care, and legal options available to kinship carers.

2.1 Definitional overview of Kinship Care

There is no consensus on the definition of kinship care, nor is there an agreed name for it.⁶ The term 'kinship care' has different meanings around the world.⁷ In the Western societies, kin is defined based on biogenetic relationship, meaning that a kin is one with shared blood.⁸ In other societies, Africa, for example, kin is viewed as both blood relatives and members of the wider community, tribe or clan.⁹ Nonetheless, kinship care has been defined by Crewe and Wilson as "the full-time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, step parents or any adult who has a kinship bond with the child."¹⁰ Similarly, Broad defines kinship care as "the upbringing of a child by kith and kin, blood and non-blood, tribes and friends".¹¹ There are other definitions or description of kinship care which includes 'network care'¹², 'connected persons care'¹³, and 'family and friends care'¹⁴. Furthermore, in England and Wales, the concept of kinship care can be gleaned from the Children Act 1989 which emphasises that children are best raised within their own families or social network except where it is considered unsafe to do so.¹⁵ The common theme in the above definitions and description of kinship care is the placement of a child within a relative or known person's home as oppose to placing them with strangers when a child is unable to continue residing with their birth parent(s) due to the likelihood of that child being at risk of significant harm.

For the purposes of this article, we will adopt the definition of Crewe and Wilson as it encompasses the global idea of kin connection to include clans, tribes and members of the wider society within the child's nuclear

1. C. McCartan, L. Bunting, P. Bywaters, G. Davidson, M. Elliott and J. Hooper, 'A four-Nation Comparison of Kinship Care in the UK: The Relationship between Formal Kinship Care and Deprivation' (2018) 17 (4) *Social Policy and Society* 619
2. E. Koh, L. Daughtery and A. Ware 'Informal kinship caregivers' parenting experience' (2022) *Children and Youth Services Review*, 133, <https://doi.org/10.1016/j.childyouth.2021.106360> [last accessed on 21 April 2024]; J. P. Gleeson, 'Kinship care for children and young people: International perspectives' in P. Dolan and N. Frost (ed) *The Routledge handbook of global child welfare* (Routledge 2017) 245–261. <https://doi.org/10.4324/9781315672960-23> [last accessed on 21 April 2024]
3. V. O'Brien, 'The Benefits and Challenges of Kinship Care' (2012) 18 (2) *Child Care in Practice* 127; K. Owusu-Bempah, *The Wellbeing of Children in Care: A New Approach for Improving Developmental Outcomes* (Routledge 2010)
4. J. Ronnau and C. Marlow, 'Towards a Definition of Family Preservation, Poverty and the Value of Diversity' in H. Astein and R. McRoy (ed) *Does Family Preservation serve a Child's Best Interest?* (George Town Press 2000)
5. S. E. Crewe and R. G. Wilson, 'Kinship Care: Family Tradition to Social Policy in the African American Community' (2006) 22 *Journal of Health and Social Policy* 1
6. P. Nixon, 'Relatively speaking: Developments in research and practice in kinship care' (*Research in Practice* 2007)
7. S. Nandy, J. Selwyn, E. Farmer and P. Vaisey, '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' <https://www.bristol.ac.uk/media-library/sites/sps/migrated/documents/execsum.pdf> [last accessed on 21 April 2023]
8. Ibid
9. L. Ince, 'Kinship Care: An Afrocentric Perspective', A thesis submitted to The University of Birmingham for the Degree of Doctor of Philosophy <https://etheses.bham.ac.uk/id/eprint/492/1/ince09PhD.pdf> [last accessed on 21 April 2023]
10. Crewe (n 27)
11. B. Broad, 'Kinship Care? What Works? Who Cares?' (2007) 13 (1) *Social Work and Social Sciences Review* 59
12. C. Best, 'Kinship Care and Transnational Parenting: The Intersection of Cultural Values and Practices' (2014) 17 *Journal of Family Social Work* 119
13. L. Ponnert, 'Emotional Kinship Care and Neutral Non-kinship Care – The struggle between discourses' (2017) 22 (2) *Child and Family Social Work* 1084
14. S. Wellard and B. Wheatley, 'Family and Friends Care? What if we said no?' <https://www.grandparentsplus.org.uk/what-if-we-said-no> [last accessed on 21 April 2023]
15. Section 22C Children Act 1989

and social network.¹

2.2. The Legal Framework

Legislation, regulations, and policies play a huge role in the protection of children in England and Wales. The legal framework underpinning kinship care in England and Wales includes the United Nations Convention on the Rights of the Child 1989 (UNCRC 1989), the Children Act 1989 (CA 1989), the Human Rights Act 1998 (HRA 1998), the Children Act 2004, Children and Young Persons Act 2008, Statutory Guidance for Family and Friend's Care 2011 (England only), Social Services and Well-Being (Wales) Act 2014 and Kinship Care Guide for Wales, and decisional laws.

The CA 1989 provides the key principle for kinship care. Section 23(1) to (5) stipulates a duty on Local Authorities to ensure that children are placed with relatives or people familiar or connected to them. However, section 23(6) delimits the applicability of subsections 1 to 5 thus, "Unless it is not practicable or consistent with the child's welfare, the child must first be placed with family and friends"² This section of the CA 1989 is also reinforced by the Adoption and Children Act 2002 (ACA 2002). The Act requires the Local Authority to consider family members and friends in the determination of the permanency plan of a child who is unable to remain living with their birth parents and where - adoption is a viable and realistic option.³ In support of the principle of the CA 1989, the Children and Young Persons Act 2008 (CYPA 2008) requires Local Authorities to give consideration and preference to placing with family members as long as it is assessed as safe to do so.⁴ The Act goes a step further to recommend that family and friends who have been nominated and positively assessed as alternative carers are approved as foster carers.⁵ Furthermore, the Public Law Outline makes it a mandatory requirement that alternative carers (mainly within the family) be explored during the pre-proceedings stages.⁶ In Wales, kinship care is also governed by the Children Act 1989 and the Social Services and Well-Being (Wales) Act 2014. Furthermore, kinship care is promoted by the Care Planning, Placement and Case Review (Wales) Regulations 2015. Regulations 22 to 29 make provision for the approval of a relative or connected person as an approved foster carer for a child within their network.

The European Convention of Human Rights (ECHR) which is currently part of the UK laws, and the United Nations Convention on the Rights of the Child 1989 (UNCRC 1989) further endorse the CA 1989 principle of placing children who can no longer reside with their birth parents within their natural family or social network. Article 8 of the ECHR talks about the right of every human being to private and family life. Article 8 UNCRC 1989 provides; "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference". Arguably, it seems that the reason behind the principles in Part IV of CA 1989 and Article 8 of the ECHR is that placing children within their family or social networks reduces the likelihood of placement disruptions, breakdowns and the anxiety of having to live with strangers.⁷ It is worth mentioning that the UNCRC 1989 is not incorporated in to the UK laws, however Local Authorities are advised to give due regard to this under the Social Services and Wellbeing (Wales) Act 2014.

English courts have also upheld the ethos of the CA 1989 that the best place for a child to be raised is within his or her natural family and the draconian option of adoption is in a situation where "nothing else will do".⁸ In the cases of *Re B (A Child)*⁹ and *Re B-S (Children)*¹⁰, although the matters were in relation to adoption, the court gave credence to the principles of the CA 1989 and ACA 2002 that the child's best interest is paramount, and that interest includes the wish to be raised by his or her birth parents or family. However, the courts have stated that each case should be considered in light of its facts. In the case of *Re W (a child)*¹¹ the English Court of Appeal allowed the appeal of prospective adopters where the lower court had dismissed their application for an adoption order and granted a special guardianship order to the family members. In this case, the child, 'A', was placed in foster care shortly after birth because her parents were assessed as unable to care for her. Care and Placement Orders were made shortly after, and the child was placed with prospective adopters at

1. Crewe (n 27)

2. Section 22C CA 2011 further reinforces this.

3. Section 1 (4) ACA 2002

4. Part 2 CYPA 2008

5. Ibid

6. J. Davey, 'The Care of Kin: A Case Study Approach to Kinship Care in the South of England and Zululand, South Africa,' A thesis submitted in partial fulfilment of the requirements of Bournemouth University for the degree of Doctor of Philosophy (*Bournemouth University 2016*) <https://core.ac.uk/download/pdf/74204547.pdf> [last accessed on 21 April 2023]; Best Practice Guidance: Support for and work with families prior to court proceedings, 2021. Microsoft Word - Prior to court proceedings BPG report.docx (judiciary.uk) [last accessed on 21 April 2023]

7. Davey (n43)

8. *Re B (A Child)* [2013] UKSC 33; *Re B-S (Children)* [2013] EWCA Civ 1146

9. [2013] UKSC 33

10. [2013] EWCA Civ 1146

11. [2016] EWCA Civ 793

the age of 7 months. When she was 17 months old, the prospective adopters, having developed a bond with her, applied for an adoption order. However, during this time, her paternal grandparents were informed about her existence having undergone an assessment for 'A's sibling and they applied for permission to oppose the adoption application and sought leave to apply for a Child Arrangements Order or Special Guardianship Order. The Court dismissed the application for adoption and granted the grandparents a Special Guardianship Order. The prospective adopters appealed and the Court of Appeal in allowing their appeal stated that the welfare of the child should be taken into account and in this case, consideration should be given to the relationship between 'A' and the prospective adopters and the effect of this should she be placed elsewhere. In effect, it seems the Court of Appeal was of the view that an application by a biological family will not automatically succeed over an application by a non-related adopter if the child's welfare is better met by the latter.

2.3. Types of Kinship Care

Opinion is divided on the types of kinship care, and according to MacDonald et al, there is confusion on the types of kinship care.¹ Some commentators have stated that kinship care is divided into two broad facets; namely, 'formal or public kinship care' and 'informal or private kinship care'.² Other commentators have divided kinship care into three types, namely, 'private kinship care', 'formal kinship care' and 'voluntary or informal kinship care'.³ Messing adopted the formal and informal kinship care categorisation but has gone further to state that informal kinship care can be further divided into 'private' or 'voluntary' kinship care.⁴ However still, it seems that the categorisation of kinship care into formal and informal is ambiguous. This view is supported by Geen who stated that the use of the terms 'formal' and 'informal' can appear misleading and incorrect.⁵ This is because the use of these terms champion the conclusion that any kinship care arrangement made with Local Authority's involvement is formal kinship care arrangement, and those made without the knowledge and involvement of the Local Authority is informal kinship care arrangement.⁶ Nonetheless, a review of the different categorisation of kinship care below demonstrates that kinship care can be provided either through an informal or a formal arrangement. To this end, we align with Geen that the contention around the types of kinship care is due to the terminologies adopted by authors.

2.3.1. Formal Kinship Care

Formal kinship care occurs when a child is placed with relatives or someone within their social network by the Local Authority as a result of substantiated harm or the risk of significant harm.⁷ Under this form of arrangement, the child may or may not be under the care of the Local Authority, however, the Local Authority's involvement could either be by initiating or providing support to formalise the placement.⁸ Formal kinship care will be discussed in depth under 2.4 (legal options available to kinship carers).

2.3.2. Informal Kinship Care

Informal kinship care has been described as the kinship arrangement typically undertaken without official ratification by welfare agencies and often unsupported by the Local Authority.⁹ Research indicates that grandparents fall within majority of this group, with 51% of children in this type of kinship care living in households headed by a grandparent.¹⁰ Davey has submitted that there are more children in informal kinship placements than in formal kinship placement. It is estimated that about 6% of children in kinship care are looked after by the Local Authority, implying that around 94% living with relatives are outside the remit of formal kinship care.¹¹ Informal kinship care is often initiated and concluded by the family and/or friend with the consent of the birth parents or any one with parental responsibility¹² for the child and without the knowledge of the Local

1. M. McDonald, D. Hayes and S. Houston, 'Understanding informal kinship care: A critical narrative review of theory and research' (2018) 7 (1) *Families, Relationships and Societies* 71
2. A. L. Strozier and K. Krisman, 'Capturing Caregiver data: An examination of kinship care custodial arrangements' (2007) 29 *Children and Youth Services Review* 226; C. Ayon, E. Aisenberg and A. Cimino, 'Latino Families in the Nexus of Child Welfare, Welfare Reform and Immigration Policies: Is Kinship Care a lost opportunity?' (2013) 58 (1) *Social Work* 91
3. R. Geen, 'The Evolution of Kinship Care Policy and Practice' (2004) 14 (1) *Children, Families and Foster Care* 131; M. Winokur, A. Holtan and K. E. Batchelder, 'Kinship care for the safety, permanency and wellbeing of children removed from the home for maltreatment: a systematic review' <https://onlinelibrary.wiley.com/doi/10.4073/csr.2014.2> [last accessed on 21 April 2023]
4. J. T. Messing, 'From the Child's Perspective: A qualitative analysis of kinship care placements' (2006) 28 *Children and Youth Services Review* 1415
5. Geen (n 51)
6. Geen (n 51)
7. Strozier (n 50)
8. M. A. Winokur, G. A. Crawford, R. C. Longobardi and D. P. Valentine, 'Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes' (2008) 89 (3) *Families in Society: The Journal of Contemporary Social Services* 338
9. MacDonald (n 49)
10. C. Ashley, R. Aziz and D. Braun, 'Doing the right thing: A report on the experiences of kinship carers' <https://frg.org.uk/wp-content/uploads/2020/09/Doing-the-right-thing.pdf> [last accessed on 21 April 2023]; Nandy (n 29)
11. Davey (n 43)
12. Section 3 (1) Children Act 1989 defines parental responsibility as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property".

Authority.¹

Informal kinship care is often arranged for a short period of time, but in practice, it has in many cases been known to become permanent arrangements because the causative factor resulting in the initial placement arrangement has remained unresolved. And in some cases, what started as informal kinship care then goes on to become 'formal' kinship care arrangements. For example, in a child protection case, where the child remains at continuous risk of significant harm in the care of his/her parents either due to witnessing domestic violence or exposure to parental substance misuse, the Local Authority may become involved following a referral from family members, friends or professionals working with the child such as the school or youth club. At this point, subject to the consent of the carer and parents, the informal arrangement becomes a formal arrangement because the Local Authority becomes involved.² Once this is the case, the child could be supported as a child in need of Care and Support.³ In other extreme cases, the child could become looked after either under voluntary accommodation⁴ or by the Local Authority initiating care proceedings and obtaining a Care Order.⁵

The distinctive feature between formal and informal kinship care is the involvement of the Local Authority. Nevertheless, some commentators have contended that kinship care arrangements can have elements of formal and informal kinship care lying within a balance.⁶ On one end of the balance is the situation of relatives caring for the child upon request of parents and without the Local Authority's involvement; on the other end of the balance is the relatives becoming approved foster carers for the child with the Local Authority's involvement and in the middle of the balance is where the Local Authority arranges for the child to reside with relatives or connected persons without actually formalising the placement.⁷ It is important to mention that once the Local Authority becomes aware of an informal placement arrangement and thereby sanctions the child to remain in that placement for more than 28 days, it has a duty to assess the placement.⁸

Roth and Ashley have suggested that sometimes the Local Authority via social workers encourage family members to care for a child without any court proceedings.⁹ This placement becomes informal, and the child considered as never been looked after. Roth and Ashley suggested that it may be that this position is adopted to absolve the Local Authority from paying fostering allowances.¹⁰ The Court of Appeal in *Southwark LBC v D¹¹, R (on the application of A) v Coventry City Council*¹² ruled that in circumstances where the child should be considered a child looked after but is not because the Local Authority is avoiding to take its financial responsibility is unlawful. Despite these judgements, in practice, such arrangements continue to happen. In view of this and to provide some form of clarity, Geen has suggested that kinship arrangements made without the involvement or knowledge of the Local Authority be called informal or private kinship care while those with the knowledge and involvement of the Local Authority be called formal or public kinship carer.¹³ Aligning with Geen's categorisation of kinship care, this paper focuses only on formal kinship care arrangements.

2.4. Legal options available to kinship carers

In England and Wales, the law recognises four types of formal kinship care arrangements, namely fostered with a relative or friend,¹⁴ subject to a Child Arrangements Order (previously known as Residence Order),¹⁵ subject to a Special Guardianship Order,¹⁶ and living with family and friends in network support.¹⁷ The legal status of the child being accommodated by the local authority determines the form of care arrangement.

2.4.1. Fostered with a relative or friend

This form of arrangement is also known as kinship foster care. This arrangement is made where the Local Authority upon nomination by birth parents approach the nominated person and ask if they are willing to be

1. Strozier (n 50)
2. A. E. Casey Foundation, 'Stepping up for kids: What government and communities should do to support kinship care' <https://www.bettercarenetwork.org/library/the-continuum-of-care/kinship-care/stepping-up-for-kids-what-governments-and-communities-should-do-to-support-kinship-care> [last accessed on 21 April 2023]
3. Section 17 Children Act 1989; Section 21 Social Services and Wellbeing (Wales) Act 2014
4. Section 20 Children Act 1989; Section 76 Social Services and Wellbeing (Wales) Act 2014
5. Section 31 Children Act 1989; Part 6 Social Services and Wellbeing (Wales) Act 2014
6. W. Walsh, 'Informal Kinship Care: Most common out-of-home placements after an investigation of child maltreatment' Factsheet No. 24 (*The Casey Institute 2013*); Geen (n 51)
7. MacDonald (n 49)
8. Children (Private Arrangements for Fostering) Regulations 2005
9. D. Roth and C. Ashley, 'Family and Friends Care: A Guide to Good Practice for English Local Authorities: Summary of Key Points' (*Family Rights Group 2010*)
10. Ibid
11. [2007] 1 FLR 2181
12. [2009] EWHC 34 (Admin)
13. Geen (n 51)
14. Part 3 CA 1989; Section 81 Social Services and Well-Being (Wales) Act 2014
15. Section 8 CA 1989
16. Section 115 Adoption and Children Act 2002
17. Section 17 CA 1989

assessed to care for the child. If positively assessed, the child is then placed in their care. The arrangement does not confer parental responsibility on the carer although they have the responsibility of managing the day-to-day affairs of the child in their care. Children placed under this form of arrangement are mainly looked after children. When a child becomes a looked after child following the Local Authority applying to court and obtaining a care order, this order enables the Local Authority to share parental responsibility with the birth parents.¹ By obtaining parental responsibility, the Local Authority can make the final decision, however, birth parents must be consulted. The parental responsibility enables the Local Authority decide where the child is to live, however it has a duty to consider the immediate and extended family of the child.² The Department of Education pre-proceedings statutory guidance stipulates that the child's wider family members are identified and involved as early as possible as they can play an important role in supporting the child and helping the parents address the identified risk factors.³

In practice, the identification process can be commenced by completing a genogram and ecomap with the parents.⁴ After gaining information and compiling the genogram and ecomap, a family group conference is held to discuss the possibility of the child remaining within the family. Although family group conferences are not a legal requirement, they are valuable for working in partnership with family members to enable the child to remain living at home with parents or to begin the process of permanence options. The meeting is usually led by an independent person (not necessarily a social worker) and the focus is on the identified risk factors and what support the family members and/or friends can provide to ensure that the child can be safeguarded. In some cases, a family group conference is not held as parents nominate alternative carers either family members or friends. Such nominated persons are assessed and based on a positive assessment are approved as kinship foster carers by the Local Authority's fostering panel.⁵

Sometimes there are challenges in identifying extended family members, one of which is the reluctance of birth parents to nominate alternative carers or even want their family members to be informed of the care proceedings. In such cases the question is whether the Local Authority has the right or duty to inform and assess such family members. The starting point is the assumption that based on the welfare principle in the CA 1989, the Local Authority has a general duty to assess the wider family in cases where there is a likelihood that the child cannot return to the care of his or her birth parents.⁶ This is demonstrated in *Royal Borough of Greenwich v Adopters*⁷ where the Court held that the fact that parents failed to put forward alternative carers does not absolve the Local Authority of the enquiries they should independently make. The duty of the Local Authority in this regard can be inferred from the provisions of the CA 1989⁸ and the ACA 2002.⁹ S. 1 of the ACA 2002 provides *inter alia* that:

S. 1 (1) ...whenever a court or adoption agency is coming to a decision relating to the adoption of a child...

S. 1 (4)... the court or adoption agency must have regards to...

(c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person ...

(f) the relationship which the child has with relatives...

(f) (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs, and

(iii) the wishes and feelings of any of the child's relatives, or any such person, regarding the child

In the case of *Re H (Care and Adoption: Assessment of wider family)*¹⁰ the issue before the Court *inter alia* was whether the Local Authority has a duty to inform and assess extended family members who are unaware of the existence of the child. In this case, H was a five-month-old baby boy and had his elder siblings adopted. The risk factors were alleged domestic violence and parental alcohol and substance misuse. Some members of the extended family were aware of H's existence, others weren't. However, parents declined putting forward

1. Section 33 CA 1989

2. Section 23 CA 1989

3. Part 6 of the Social Services and Well-being (Wales) Act 2014; Statutory guidance on court orders and pre-proceedings for local authorities'

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306282/Statutory_guidance_on_court_orders_and_pre-proceedings.pdf [last accessed on 22 April 2023];

4. Genogram and ecomaps are visual tools used during assessment to have a visual display of a child's family tree and other support networks.

5. The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019; Fostering Services (England) Regulations 2011

6. *Royal Borough of Greenwich v Adopters* [2018] EWFC 87

7. [2018] EWFC 87

8. Section 22C CA 1989

9. Section 1 (4) ACA 2002

10. [2019] 1 WLR 3017

alternative carers to be assessed. H's father alleged that none of his family members would be in a position to care for H and he did not want to burden them with the knowledge of a child they could do nothing about. The Local Authority in keeping with the principle of the Children Act 1989 sought to contact the family members but H's father objected. Cobb, J in delivering his judgment considered all the relevant legislation, guidance and case laws and concluded that while the CA 1989, ACA 2002 and Adoption Agencies Regulations 2005 (AAR 2005) do not specifically impose an absolute duty on the Local Authority to inform, consult, assess or otherwise consider wider family members, the spirit of the CA 1989 is supportive of involving the wider family. In view of his analysis Cobb J held that H's father is given the opportunity to personally inform his parents about H, if with the support of the social worker or Guardian, if needed. However, if he chooses not to then the Local Authority has the right to inform his family of H's existence.

Once relatives or friends have been assessed and approved as kinship foster carer, it is expected that they receive support from the Local Authority, and this includes financial support.¹ To this end, Local Authorities should accord kinship carers the same treatment as non-kinship carers. Whilst it may be the case that Local Authorities provide equal level of support services such as emotional support and appropriate trainings for both kinship and non-kinship carers, there remains the issue of imbalance in the financial scaling as some Local Authorities pay kinship foster carers less than non-kinship foster carers. Arguably, this is a major aspect of uneven treatment between kinship and non-kinship carers by some Local Authorities over the years. Hence Colton et al have argued that the differential treatment in finances has affected the motivation of relatives coming forward to be assessed as kinship foster carers.² In the cases of *Re L and others v Manchester City Council*³ and *Re R and another v Manchester City Council*⁴ Munby J held that Local Authority kinship carers should not be financially discriminated against.

Furthermore, O'Brien has argued that irrespective of the decision in the cases of *Re L and others v Manchester City Council* and *Re R and another v Manchester City Council*, the discrimination remains an ongoing occurrence.⁵ This is illustrated in *R (on the application of X) v London Borough of Tower Hamlets*⁶ the Local Authority placed three children viewed as "damaged and difficult" with their aunt who was subsequently approved as kinship foster carer for the children. The aunt received payments; however, her pay was substantially less than that paid to non-kinship foster carers. She applied to court for a judicial review challenging the policy and practice of the Local Authority. She argued that the differential treatment she received as kinship carer as opposed to non-kinship carer was unlawful. The Court held that the Local Authority's policy was unlawful to the extent that it discriminated on grounds of pre-existing relationship with the child.⁷ Nonetheless, it seems this gap is closing up as demonstrated in a longitudinal research study conducted by the Family Rights Group where it was found that kinship foster carers are now treated equally as non-kinship foster carers.⁸

2.4.2. Child Arrangements Order

Child Arrangements Order was introduced in 2014 following the amendment of S. 8 CA 1989 by the Children and Families Act 2014.⁹ The Order replaces Residence and Contact Orders.¹⁰ The court in determining an application for Child Arrangements Order, considers and makes decisions as to where a child will reside and the level of contact the child is to have with the non-resident parent. Section 10 CA 1989 provides who can apply for this order and they include birth parents (whether or not they have parental responsibility), special guardians of the child, stepparents (whether current or past), Local Authority carer who has lived with the child for at least one year immediately preceding the application and any person with whom the child has lived with for a period of at least three years. This period does not have to be continuous as long as it begun more than five years prior and ended more than three months before the application. Any other person not included in the above list can apply for this order by first seeking leave of the court.¹¹ It is worth mentioning that although the court makes an Order regarding who the child resides with, it does not make an Order as to who will care for the child.¹² To this end, whilst it may not be explicitly mentioned in the Act, it is generally assumed that the person named in the

1. *R (SA) v Kent County Council* [2011] EWCA Civ 1303

2. M. Colton, S. Roberts and M. Williams, 'Recruitment and Retention of Family Foster-Carers: An International and Cross-Cultural Analysis' (2008) 38 (5) *BJSW* 865

3. [2001] EWHC Admin 707

4. [2002] 1 FLR 43

5. O'Brien (n 25)

6. [2013] EWHC 480 (Admin)

7. *Ibid* at para 115

8. J. Hunt and S. Waterhouse, 'It's Just Not Fair! Support, need and legal status in family and friends care' <https://fostercarerresources.files.wordpress.com/2014/12/its-just-not-fair-support-need-and-legal-status-in-family-and-friends-care.pdf> [last accessed on 22 April 2023]

9. S. 12 Children and Families Act 2014

10. S. 8 (1) CA 1989

11. S. 10 CA 1989

12. *Re S (A Child)* [2010] EWCA Civ 705

Child Arrangements Order is entitled to make important decisions about the child's care, subject to the court's intervention, the apparent duty to consult on important matters, etc.¹ The Child Arrangements Order confers parental responsibility on the person to whom the Order is granted and this lasts for the lifetime of the Order or until the child becomes 18 years old.² For kinship carers, although the Order confers parental responsibility on the carer, this is shared with the birth parents and this means that the parents are consulted for major decisions, though not all birth parents will have parental responsibility in the first place.

The Child Arrangements Order is a private law Order governed by S. 8 CA 1989, however in some instances it has been recommended as the final order in public law proceedings. This is mainly in cases where there is evidence that the child can be safely cared for by either of the parent or an extended family member. According to Pomeroy and Watts, public law proceedings are now frequently finalised with private law orders such as Child Arrangements Order and Special Guardianship Orders.³ Arguably, this can be because of the emphasis of keeping children within their family where it is safe to do so. Where this is the case, the court could make a Supervision Order for a period of six to twelve months to enable the Local Authority to keep an eye on the situation and support the family by advising, befriending and assisting the family.⁴

Whilst the Order allows for children to reside with family and friends, Selwyn and others in their research suggested that some carers have stated that they were "bullied or coerced" into making private law applications to avoid the probability of the child becoming looked after.⁵ Carers have lamented that this notwithstanding, they have little or no support although the child is at this point assessed as a Child in need of Care and Support so any support from the Local Authority is discretionary.⁶ The only confirmed financial entitlement the carer has is the child benefits and tax credit if eligible. Carers can also claim child maintenance from the parents either voluntarily or by applying through the Child Maintenance and Enforcement Commission.⁷ Apart from financial support, which is discretionary, being a Child in Need entitles the child to some practical and emotional support such as counselling, support with contact and social work support.⁸ In practice, these supports are only available where the child is "open" to the Local Authority. A child is considered as "open" to the Local Authority when they have an allocated social worker who visits the family regularly, and this is usually where there is an ongoing need.⁹

2.4.3. Special Guardianship Order

Special Guardianship Order is another legal option available for kinship carers. The Order appoints a person to be the special guardian of a child who is unable to continue residing with their parents. The Adoption and Children Act 2002 provides the legal framework for Special Guardianship Order.¹⁰ The 2002 Act amended section 14 of the Children Act 1989 by inserting Sections 14A – 14F. These added sections deal with the Order itself, the making, effects, variations, discharge, and support services of Special Guardianship. Section 14A (5) of the Children Act 1989 provides for who can make an application for the Order to include, guardian of the child, a Local Authority foster or kinship carer who has lived with the child for at least one year immediately preceding the application, a person named in a Child Arrangements Order as the person with whom the child should reside with. The Act also states that the special guardian must be 18 years and over and not the birth parent of the child.¹¹

According to Miller¹² special guardianship order was designed as an option where long-term fostering or adoption is not considered to be appropriate especially where the child needs to maintain a close connection with his/her birth family. Similarly, Jordan and Lindley¹³ re-echoed this view by stating that the Order provides an option for meeting the child's needs in a more secure and permanent family environment without the need of going through the adoption process. Although this may be the case, it can be argued that in the making of this

1. Hunt and Waterhouse (n 95)
2. S. 12 (5) CA 1989
3. H. Pomeroy and A. Watts, 'Public Law meets Private Law' (*IKBW 2018*) https://www.ikbw.co.uk/wp-content/uploads/2018/05/Helen-Pomeroy_Andrea_Watts_Public.pdf [last accessed on 5 May 2023]
4. S. 31 CA 1989; *Y (Children)* [2014] EWCA Civ 1553
5. J. Selwyn, E. Farmer, S. Meaking and P. Vaisey, 'The Poor Relations? Children and Informal Kinship Carers Speak Out' (*University of Bristol 2013*)
6. S. 17 (10) CA 1989 defines as Child in Need as a child who is under 18 and who is unlikely to achieve or maintain a reasonable standard of health or development without provision of appropriate services by the Local Authority; or whose health or development is likely to be significantly impaired without the provision of appropriate services by a Local Authority; or who is disabled.
7. Hunt and Waterhouse (n 95)
8. Hunt and Waterhouse (n 95)
9. Ealing Children's Services Procedures Manual https://ealing.proceduresonline.com/p_cin_plans_rev.html [last accessed on 5 May 2023]; M. Baginsky and J. Manthorpe 'Managing through COVID-19: the experiences of children's social care in 15 English local authorities' (2020) *NHR Policy Research Unit in Health and Social Care Workforce, The Policy Institute, King's College London*.
10. S. 115 Adoption and Children Act 2002
11. Section 14A (2) CA 1989
12. L. B. Miller, *Assessing the Support Needs of Adopted Children and their Families: Building Secure New Lives* (Taylor Francis 2006)
13. L. Jordan and B. Lindley, 'Special Guardianship? What does it offer children who cannot live with their parents' (*Family Rights Group 2006*)

Order, the court takes into consideration the existence of an established relationship on a case-by-case basis. In *Re S (Adoption Order or Special Guardianship Order)*¹ the decision of the lower court making a Special Guardianship Order instead of an adoption order to a foster mother was upheld by the Court of Appeal. The Court of Appeal reasoned that the lower court was right when it gave consideration to the close relationship between the 6 year old child and her birth mother.² In contrast, in *Re AJ (Adoption Order or Special Guardianship Order)*³ the Court of Appeal upheld the decision of the lower court to make an adoption order instead of a Special Guardianship Order in favour of relatives where the children did not have any form of relationship with their birth parents and where it was considered that adoption met the children's long-term need for stability. The two cases above demonstrate that though placement with family and/or friends is an accepted first option of care to be considered, the court needs to be satisfied that there is an established relationship between the child and his/her proposed family and/or friend carers.

Although, Special Guardianship Order confers the day-to-day parental responsibility on the special guardians, the parents still retain some parental responsibility. This means that the parents need not be consulted for decisions concerning the child's day-to-day control. Nonetheless, the text of section 14C of the CA 1989 as amended by ACA 2002 is to the effect that the special guardian cannot consent to the child being placed for adoption, change the child's surname or take the child abroad for more than three months without the consent of the birth parents.⁴ With regards to the change of surname, S. 14C (3) provides that this can be done with the written consent of the birth parents or with the leave of court, however this should be considered on a case by case basis. This is demonstrated in *Re L (Special Guardianship: Surname)*⁵ where maternal grandparents had been granted special guardianship however they appealed the judge's refusal to grant leave to change the child's surname among other issue. In rejecting the appeal on this issue, the court stressed that the issue of identity is a significant feature of a child's welfare. In this case, the court reasoned that the child needed to learn that she was raised by her grandparents and not by her parents.

Research suggests that there has been an increase in the use of Special Guardianship Orders with over 25,000 placements in England in 2018 following an increase from 23,000 in 2017, and 712 in Wales in 2017 following an increase from 635 in 2016.⁶ Like Child Arrangements Order, Special Guardianship Order is a private law order however it can be recommended in public law proceedings as a final order. Unlike the Child Arrangements Order, S. 14F⁷ stipulates that special guardians are provided with support in form of counselling, advice, information and financially. In practice, financial support is means tested and the support is largely left to the discretion of the assessing local authority and as such the support can vary from one local authority to another. Concern has been raised regarding the financial support available to special guardians. This is in relation to the disparity in payments which Wade and others have argued could stem from the fact that the fostering rates remain unclear and the lack of financial arrangements for special guardians.⁸ In *B v London Borough of Lewisham*⁹ the Court held that the Borough's financial support scheme for special guardians based on adoption allowance instead of fostering rates was unlawful. The Court stated that fostering allowances are the starting point. Another concern is on the issue of who is responsible for providing the identified support in cases where the special guardian resides with the child in a different local authority from where the order was made. Section 14F of the Children Act 1989 lays out how this can be managed in terms of support but the exception to this is in terms of finances. This continues to pose an issue particularly between England and Wales as both countries are guided by different regulations.¹⁰ In practice, this hugely affects the children and their carers as it causes delay and in extreme cases a halt in payments to special guardians. The Courts have stepped-in to advise that local authorities should agree as early as possible on who will execute the statutory duties.¹¹

2.4.4. Voluntary placement with family and friends in network support

This form of kinship care option is also known as the voluntary accommodation by the Local Authority. In this situation, the child is accommodated by the Local Authority with the consent of the parent(s) with parental

1. [2007] EWCA Civ 54; [2007] 1 FLR 819

2. *Re I (Adoption: Appeal & Special Guardianship)* [2012] EWCA Civ 1217

3. [2007] EWCA Civ 55; [2007] 1 FLR 507

4. S. 14C (2), (3) and (4) CA 1989

5. [2007] EWCA Civ 196

6. J. Harwin, B. Alrouh, L. Golding, T. McQuarrie, K. Broadhurst and L. Cusworth, 'The Contribution of Supervision Orders and Special Guardianship to Children's Lives and Family Justice' (*London: Nuffield Foundation 2019*) https://www.cf-lancaster.org.uk/app/nuffield/files-module/local/documents/HARWIN_SO_SGO_FinalReport_V2.1_19Mar2019.pdf [last accessed on 5 May 2023]

7. Children Act 1989

8. J. Wade, I.A.C. Sinclair, L. Stuttard and J. Simmonds, 'Investigating Special Guardianship: Experiences, Challenges and Outcomes' <https://eprints.whiterose.ac.uk/82322/2/SpecialG2014Summ.pdf> [last accessed on 10 May 2023]; Hunt and Waterhouse (n 95)

9. [2008] EWHC 738 (Admin)

10. The Special Guardianship (Wales) (Amendment) Regulations 2018; The Special Guardianship (Amendment) Regulations 2016 (England)

11. *Suffolk County Council v Nottingham County Council* [2012] EWCA Civ 1640

responsibility.¹ The child in this case is placed with a family member or friend within their social network. Under this type of kinship care, the parents still retain their parental responsibility however, in practice they are required to sign a delegated authority form.² It is instructive to note that there is no law requiring the consent to be evidenced in writing³ however, Local Authorities have been advised that it is safe and wise to have such consent evidenced in writing with parent(s)' signature.⁴ A parent who has given consent for their child to be accommodated by the Local Authority has a right to withdraw their consent at any time and remove the child and the Local Authority is not to prevent them from doing so.⁵ In *Re N (Children) (Adoption: Jurisdiction)*⁶ the Court stated that a local authority who prevents a parent from removing their child in circumstances within the context of Section 20(8) acts unlawfully.

A major difference between this form of kinship care (2.4.4) and fostered with a relative or friend discussed in 2.4.1 above is that the latter is a care order with a plan to place the child with a kinship foster carer, and for parents to have their child back in their care, they need to apply to court to discharge the care order. Whereas the former (2.4.4) is a voluntary accommodation with agreed kinship foster care. This form of kinship care can be initiated for a short period of time, possibly until parents are able to implement some changes and time is considered not to have any significant impact on the welfare and wellbeing of the child. For example, in cases where the home conditions need improvement.

It seems that a major issue that has been raised with regards to voluntary accommodation under S. 20 CA 1989 and S. 76 SSWBA 2014 is the experienced delay in making permanency plans for the child. In *Re P (A Child: Use of Section 20)*⁷ the Court condemned the Local Authority's failure to make any permanency plans for the child and holding the child in a S. 20 accommodation for 2 years.⁸ This raises the question as to how long the placement is to last. Judge Bellamy, in a practice guide on S. 20 stated that the section was not intended to be used as a long-term but a short-term measure pending the commencement of care proceedings.⁹ The guidance further suggested that any S. 20 placements which lasted more than three months should be reviewed. Considering this, it can be implied that all voluntary accommodation should be regularised by applying to court for a care order within the first three months of the commencement of the placement. The Care Planning, Placement and Case Review (England) Regulation 2010 (reg. 24) and Care Planning, Placement and Case Review (Wales) Regulation 2015 (reg. 26) both place a duty on the placing local authority to carry out an assessment of the carer either as a kinship foster carer or as a Special Guardian. Once the assessment is completed and the carer goes through the fostering panel and is approved as a kinship foster carer, the carer becomes eligible for support. In practice, once the carer has a positive viability assessment and is undergoing a connected persons' assessment, the carer is entitled to receive fostering allowance. Nonetheless, the Supreme Court's case of *Williams v Hackney*¹⁰ is very instructive. In that case, the Supreme Court as per Lady Hale provided considerable guidance about the effectiveness of S.20 accommodation by local authorities. The Court reinforced the relevance of providing clear communication to parents about their right to withdraw their consent for the local authority to accommodate their child. The Court further stated and declared that when a parent withdraws their consent, an accommodation under S. 20 by the local authority ceases to be legal.

2.5. Statutory Assessment of Kinship Carers

The assessment process of prospective kinship carers is integral to their role. The assessment and approval process are highly debated issues within literature, and it would appear that there is a common theme centred on the method of assessment. Owusu-Bempah focuses on the challenges kinship carers face in trying to meet the approval standards.¹¹ He considers factors such as age and lack of suitable accommodation as a significant hurdle in meeting the criteria to be approved.¹² Similarly, Farmer and Moyers focused on whether there ought to be a different assessment standard and approach for kinship carers considering their experiences and how they got to start caring for the child.¹³ Furthermore, Robinson discusses the content of the assessment and whether it

1. Section 20 Children Act 1989; Section 76 Social Services and Well-Being (Wales) Act 2014

2. Delegated authority enables the carers to make day to day decisions for the children without necessarily consulting the parents such as attending routine medical appointments

3. *R (G) Nottingham City Council v Nottingham University Hospital* [2008] 1 FLR 1668

4. *Re N (Children) (Adoption Jurisdiction)* [2015] EWCA Civ 1112

5. S. 20 (8) Children Act 1989; S. 76 (5) Social Services and Well-Being (Wales) Act 2014

6. [2015] EWCA Civ 1112

7. [2014] EWFC 775

8. *Northamptonshire CC v AS and Others* [2015] EWHC 199

9. C. Bellamy, 'Practice Guide: The use of Section 20 of the Children Act 1989 in the context of Child Protection' https://www.proceduresonline.com/barnsley/cs/files/use_of_s20.pdf [last accessed on 10 May 2023]

10. [2018] UKSC 37; [https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2018/37.html&query=\(Williams\)+AND+\(v\)+AND+\(Hackney\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2018/37.html&query=(Williams)+AND+(v)+AND+(Hackney)) [last accessed on 12/04/2024]

11. Owusu-Bempah (n 25)

12. Owusu-Bempah (n 25)

13. E. Farmer and S. Moyers, *Kinship Care: Fostering Effective Family and Friends Care* (Jessica Kingsley 2008)

considers the cultural aspects of the carers.¹ Arguably, it seems that the common theme is the quality of the assessment in relations to the tools and the approaches adopted.

Research indicates that a quality assessment for kinship carers is important² however because of the several challenges in relation to the personal experiences of the carers, there appears to be no unanimity on a definitive tool or approach to be adopted.³ According to Farmer and Moyers⁴ majority of kinship carers come into caring for the child as a result of a family crisis therefore very likely to be unprepared for the challenges. They therefore question whether this should warrant a different assessment approach compared to non-kinship carers who are deemed to be more prepared and have chosen the caring role as a profession.⁵ Whilst there appears to be a consensus that a different assessment approach should be applied in kinship care assessment, Argent has stressed that this does not mean a decline in the expected standard.⁶ To this end, authors have suggested and agreed that the assessment should be flexible but rigorous, supportive, empowering, inclusive, enabling rather than approving, sensitive and respectful.⁷

The importance and relevance of the assessment is not in question however, key messages from kinship carers have shown resentment for the process.⁸ According to Owusu-Bempah, some carers developed this resentment because they felt they were being compelled to give up their privacy and independence in return for approval and financial remuneration while others expressed the need to feel valued and respected.⁹ In light of this, Winokur and others have suggested that a more collaborative approach which sees the kinship carers as experts rather than mere participants should be adopted with more focus on the family's strength and established relationship between the kinship carer and the child.¹⁰ Whilst literature and research indicate the acknowledgement of an assessment as vital, in practice there is an inadequacy of the appropriate tools to support the collection of appropriate and relevant information which will ensure the carer's individual needs are identified. A major omission in this respect is the lack of cultural aspect and this is possibly due to a lack of knowledge of cultural diversity by the assessing social worker.¹¹

3.0 Benefits and Challenges of Kinship Care

This part is divided into two sections. The first section will discuss the benefits of kinship care while the second section will consider the challenges of kinship care.

3.1. Benefits of Kinship Care

Research suggests that kinship care has been a common practice for a long time and is now emerging as an option of choice compared to other forms of substitute care.¹² According to Argent, this may be due to both the lack of alternative placements and the paradigm shift in the Courts' view that children remain within their family as long as it is safe to do so.¹³ She reasoned that this shift in focus to kinship care is at an age where, if backed by appropriate legislation and guidance which provides support to both the children and their carers, it could make a real difference to the child's life.¹⁴ Furthermore, research indicates that kinship care is beneficial to the overall wellbeing of the child subject to this form of care.¹⁵ To this end, the benefits of kinship care cannot be overstated. In the light of its benefits, some local authorities have created specialist kinship or connected persons teams whilst developing more robust policies to promote kinship care as a tool for preserving families and avoiding family breakdown.¹⁶

O'Brien has argued that in discussing the benefits of kinship care, there are lots of research which has

1. L. Robinson, *Cross-Cultural Child Development for Social Works: An Introduction* (Palgrave 2007)
2. Farmer and Moyers (n 136)
3. Davey (n 43)
4. Farmer and Moyers (n 136)
5. Farmer and Moyers (n 136)
6. H. Argent, 'What's the problem with Kinship Care?' (2009) 33 (3) *Adoption and Fostering* 6
7. M. McHugh, *A Framework of Practice for Implementing a Kinship Care Program* (University of New South Wales 2009); Hunt and Waterhouse (n 95)
8. J. Hunt and S. Waterhouse, 'Understanding Family and Friends Care: The Relationship between Need, Support and Legal Status. Carers Experiences' <https://fig.org.uk/wp-content/uploads/2021/07/FFC-Relationship-Summary.pdf> [last accessed on 10 May 2023]
9. Owusu-Bempah (n 25)
10. M. A. Winokur, A. Holtan and D. Valentine, 'Kinship Care for the Safety, Permanency and Well-being of Children removed from the Home for Maltreatment' (2009) 5(1) *Campbell Systematic Reviews*, 1 - 171
11. Ince (n 31)
12. O'Brien (n 25); K. Owusu-Bempah, *The Wellbeing of Children in Care: A New Approach for Improving Developmental Outcomes* (Routledge 2010)
13. H. Argent, 'What's the problem with kinship care?' (2009) 33 (3) *Adoption and Fostering* 6
14. Ibid.
15. M. A. Winokur and K. E. Batchelder, 'Systematic Review of Kinship Care effects on safety, permanency and wellbeing outcomes' (2018) 28 *Research on Social Work Practice* 19; E. Farmer, 'How do Placements in kinship care compare with those in non-kin foster care: Placement patterns, progress and outcomes?' (2009) 14 (3) *Child and Family Social Work* 331
16. J. Martin, 'Family values : Council services to family and friends who care for others' children https://dera.ioe.ac.uk/18881/7/Family-Values-26.11.2013.-pdf_Redacted.pdf [last accessed on 10 May 2023]

considered the views of the kinship carers with very minimal research considering the children's own voices to understand whether the children aspire to the same outcomes as adults expects.¹ While this may be the case, this section seeks to add to the current literature by considering the benefits of kinship care in terms of the stability it offers the children. The areas to be considered include placement stability, identity formation, preservation of familial relationship with particular reference to maintaining contact and safeguarding and protection of children.

3.1.1. Placement stability

Placement stability is always considered as one of the advantages of kinship care.² According to Broad, this is because the contribution of kinship care as a placement option is very significant in the level of stability it provides the child.³ The term 'placement stability' has been suggested to be a contested term⁴ and Messing argues that this is because there is no agreed yardstick for measuring stability.⁵ For instance, Webster and others have suggested that a history of three or more placements is classed as placement instability,⁶ while Terling-Watt has contended that one disrupted placement amounts to instability for the child.⁷ Nonetheless, this article holds the view that the (in)stability of a child in respect to placement breakdown may not in itself depend on the number of placement moves but whether the child has experienced change in his or her close circle such as schools and play group.

It has been suggested that kinship foster placement has a tendency to face less disruption when compared to non-kinship placement.⁸ In a research conducted by Doolan and Lawrence,⁹ 11 children subject to kinship care were interviewed and all but one of them described their placement as long term and stable.¹⁰ The research, though with a very small sample and may have been self-selected, considered the views of children and young people in terms of their thoughts about their placement. Similarly, in a research on the effects of kinship care on safety, permanence and well-being outcome carried out by Winokur and others in 2008, it concluded that children in kinship care experience better outcomes in regards to placement stability among others.¹¹ Though the research conducted by Doolan in 2004 and Winokur in 2008 are more than a decade ago, their findings are still reflected in the recent systematic review completed in 2018.¹² Conversely, some writers have argued that even though kinship care tends to face less disruption, when compared to non-kinship care, the margin is very little.¹³ This was evidenced in a research conducted by Farmer using a small British sample where she noted that the difference in placement breakdown between kinship and non-kinship placements was 1%.¹⁴ Whilst there are studies indicating that kinship care provides placement stability and face less disruption when compared to non-kin placement, attention has been drawn to the fact that certain factors can reduce or increase the chances of disruption.¹⁵ These factors include the age of the children and the kinship carer group.¹⁶ Farmer and Moyers suggested that the chances of placement with kin experiencing a breakdown increases when the child placed is over 10 years old.¹⁷ In support, Konijn and others suggested that this is because the older the child, the more

1. O'Brien (n 25)
2. O'Brien (n 25); S. A. Font, 'Is higher placement stability in kinship foster care by virtue or design?' (2015) 42 *Child Abuse and Neglect* 99; B. Broad, 'Kinship care: What works? Who cares?' (2007) 13 (1) *Social Work and Social Sciences Review* 59
3. Winokur and Batchelder (n 151)
4. C. Hughes, 'Kinship Care: How is the role perceived? What are the specific difficulties and support needed?' <https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:218284&datastreamId=FULL-TEXT.PDF> [last accessed on 10 May 2023]
5. Messing (n 52)
6. D. Webster, R. P. Barth and B. Needell, 'Placement stability for children in out-of-home care: A longitudinal analysis' (2000) 79 (5) *Child Welfare* 614
7. T. Terling-Watt, 'Permanency in kinship care: An exploration of disruption rates and factors associated with placement disruption' (2001) 23 (2) *Children and Youth Services Review* 111
8. O'Brien (n 25)
9. M. N. Doolan and P. Lawrence, 'Growing up in care of relatives or friends. Delivering best practice for children in family and friends care' (Family Rights Group, 2004) 23.
10. Ibid.
11. M. A. Winokur, G. A. Crawford, R. C. Longobardi and D. P. Valentine, 'Matched Comparison of children in kinship care and foster care on Child Welfare Outcomes' (2008) 89 (3) *Families in Society: The Journal of Contemporary Social Services* 338; M. A. Winokur, A. Holtan and D. Valentine, 'Kinship care for the safety, permanency and wellbeing of children removed from the home for maltreatment' <https://onlinelibrary.wiley.com/doi/10.4073/csr.2014.2> [last accessed on 13 May 2023]
12. Ibid.
13. E. Farmer, 'What factors relate to good placement outcomes in kinship care?' (2010) 40 *BJSW* 426; T. Bell and E. Romanoo, 'Permanency and Safety among children in foster family and kinship care: A scoping Review' (2017) 18 *Trauma, Violence and Abuse* 268
14. E. Farmer and S. Moyers, *Kinship Care: Fostering effective Family and Friends Placements* (Jessica Kingsley Publishers 2008) 39
15. O'Brien (n 25)
16. E. Lutman, J. Hunt and S. Waterhouse, 'Placement Stability for Children in Kinship Care: A Long-Term Follow-Up of Children Placed with Kinship Care through Care Proceedings' (2009) 33 (3) *Adoption and Fostering* 28
17. Farmer and Moyers (n 166)

likelihood they have experienced some form of maltreatment therefore they exhibit more behavioural problems.¹ However, they suggested that this increases the risk of placement breakdown irrespective of whether placed with relatives or non-relatives.²

Variation in the kinship carer group is another factor which authors argue increase or decrease the risk of placement breakdown. Research suggests that there are three main distinct kinship carer groups, namely; grandparents, older siblings and other relatives (such as uncles, aunts and cousins).³ An analysis undertaken by Wijedasa using the 2011 census data reported that grandparents formed the largest kinship carer group.⁴ Similarly, in a recent survey conducted by the Family Rights Group, it was reported that 65% of their sample population of kinship carers were grandparents.⁵ Research conducted by Farmer and Moyers suggested that children placed with grandparents were least likely to experience placement breakdown.⁶ From their sample population, 8% with grandparents were reported to have experienced placement breakdown compared with 27% placed with other relatives and 30% placed with non-kin foster carers.⁷ Likewise, the research conducted by Hunt and others⁸ supports the finding that placement with grandparents was likely to face less disruption. The research showed that of their sample population, 84% of placement with grandparents lasted as long as was required or was still ongoing in comparison with 46% of placement with other relatives.⁹ It can be speculated that grandparents have a greater sense of obligation therefore the likelihood to persevere in the face of challenges. It could be argued that the reason why placement with other relatives appears to be less stable is because of factors such as the relatives having their own children who might be the same age as their nieces or nephews they are looking after, insufficient resources to spread equally, children's behaviour or the children even requesting to end the placement.¹⁰ This is demonstrated in a research study by Lutman and others where it was found that only 3% of their sample population was unable to continue with the placement due to ill-health, 6% no longer wanted to care, 10% experienced difficulties in their relationship with the children while 55% reported that the placement broke down either because of the children's behaviour or the child requested to leave.¹¹ Whilst some research may indicate that kinship placement experience the same level of disruption as non-kinship placement, a systematic review and meta-analysis of over 102 qualitative research studies indicates that children placed with kin are likely to experience greater stability than those placed in non-kin foster placements.¹²

3.1.2. Identity formation

Identity is an important issue for every human being particularly during the adolescent years where questions such as 'who am I' and 'where am I from' are asked.¹³ According to O'Brien answering these questions are done on a day to day basis therefore they are best done within the family and community.¹⁴ In addition, Erickson suggested in his model on the Psychosocial Stages of Development, that an individual cannot be understood in isolation from their social context, therefore there is need to understand their identity.¹⁵ Also, Owusu-Bempah added that having knowledge of one's hereditary background is an important element for everyone especially looked after children, as it helps them to adjust and settle properly in their placement.¹⁶ He submitted that this knowledge forms the basis for their identity which in turn enhances their self-worth, self-image and self-esteem.¹⁷ Though opinions are divided on the meaning of identity and there appears to be no general consensus on its definition however a common denominator is that identity is an integral part of mankind.¹⁸ Furthermore,

1. C. Konijn, S. Admiraal, J. Baart, F. Van Rooji, C-J Stams, C. Colonesi and M. Assink, 'Foster Care Placement Instability: A Meta-Analytic Review?' (2019) 96 *Children and Youth Services Review* 483; Winokur (n 163)
2. Konijn & others (n 170)
3. D. Wijedasa, 'Children Growing up in the Care of Relatives in the UK' (*University of Bristol 2017*) https://www.bristol.ac.uk/media-library/sites/policybristol/briefings-and-reports-pdfs/2017-briefings--reports-pdfs/PolicyBristol_Report_November_2017_Kinship_Care.pdf [last accessed on 18 May 2023]
4. J. Hunt, 'Grandparents as Substitute Parents in the UK' (2018) 13 (2) *Contemporary Social Science* 175
5. C. Ashley and D. Braun, 'The Highs and Lows of Kinship Care: Analysis of a Comprehensive Survey of Kinship Carers 2019' (*Family Rights Group 2019*) <https://frg.org.uk/wp-content/uploads/2021/04/The-highs-and-lows-of-kinship-care-report.pdf> [last accessed on 18 May 2023]
6. Farmer and Moyers (n 166)
7. Farmer and Moyers (n 166)
8. J. Hunt, S. Waterhouse and E. Lutman, 'Children placed with kinship carers through care proceedings' (2008), Vol. 38, *Family Law*, 435 – 440
9. Hurt & others (n 177)
10. Lutman & others (n 168)
11. Lutman & others (n 168)
12. Farmer & Moyers (n 166)
13. E. Erickson, *Identity, Youth and Crisis* (Norton and Company 1968), 336
14. O'Brien (n 25)
15. Erickson (n 182)
16. Owusu-Bempah (n 25)
17. Owusu-Bempah (n 25)
18. A. K. Colbridge, A. Hassett and E. Sisley, 'Who am I? How Female Care Leavers Construct and make sense of their Identity' (2017) 7 (1) *Sage Open* <https://doi.org/10.1177/2158244016684913> [last accessed on 18 May 2023]; H. Cinoglu and Y. Arkan, 'Self, Identity and Identity Formation: From the Perspectives of three Major Theories' (2012) 9 (2) *Journal of Human Science*, 1114 – 1131.

Ritchie suggests that the identity of a person incorporates their cultural, religious, ethnic heritage and beliefs.¹ Research indicates that placing children with their kin enables them maintain normality despite having experienced trauma whilst in the care of their birth parents.² This is because they are with familiar people and there is the likelihood that for those of them who are of an age of understanding, it may not be the first time that they have been in the homes of these relatives. In a research study conducted by Farmer and others, they found that children in non-kinship placements struggled with their self-esteem as they felt they were different and stigmatised for not living with their family.³ To this end, Messing has argued that kinship care protects the children from this stigma and provides them with a cover story.⁴

A key feature of identity formation is the continuity of cultural heritage.⁵ Without kinship care, the continuity of culture for some children in non-kinship placement will be non-existent. This is particularly in relation to children from Black Ethnic Minority (BME) groups. Ince⁶ conducted research involving black ethnic minority children in foster carer. She found that a consistent theme in the sample population was their loss of identity and cultural heritage.⁷ Though this study is over twenty years old, the outcome still resonates in recent times mainly among children from black ethnic minority groups. This position demonstrates an instance in practice where a teenage child stated ‘I feel empty, I miss going to my family church, I miss my traditional food and I can no longer speak my native language well anymore’⁸. While it can be argued that this may be an isolated and extreme case, it is an example of a child who has begun to ask questions about his or her identity. The answer to such question, this paper would argue may be best given if the young person were living with their kin. Conversely, it could be argued that if the young person were to live with non-kin carers of the same ethnic, religious and cultural background, the issue of identity in respect of continuity of cultural heritage would be averted. Winter and Cohen suggested that in considering identity of an individual, it should not be divided into parts as each section is an integral part of the whole.⁹ They contended that young people without the knowledge of their personal history experience difficulties in their overall well-being due to the lack of identity and the feeling of a sense of loss attached to it.¹⁰ To mitigate this sense of loss, in practice, practitioners (social workers) are advised to undertake some life story work with the child.¹¹ This work attempts to give the child some of their history. The work provides the child with his background information in terms of their parents (for adopted children), where they are from, where they were born and the reason why they are not living with their birth parents. The work though important can provide some information about who the child is, however, it does not go in depth as it is an abridged version hence the importance of kinship care as the information, research indicates will be provided in more depth and as at when requested by the child.¹²

3.1.3. Preservation of familial relationships (contact)

Research shows that maintaining links with family is another benefit of kinship care and it also promotes the child’s sense of identity.¹³ Maintaining this link is in the form of contact. According to O’Brien contact is a good tool for evaluating the stability of the family relationships.¹⁴ She argued that if contact is well managed among family members, it will not only be cost effective for local authorities but promote more regular contact which can feel more natural for the child.¹⁵

Local Authorities have a legal responsibility to promote and support contact between looked after children and their families unless it is not consistent with the welfare of the child.¹⁶ In practice, when a case is in care proceedings, the Local Authority tends to set contact for at least once a week and no more than thrice a week. This is usually to inform the assessment process to decide if reunification is the right outcome for the child.¹⁷ If

1. C. Ritchie, ‘Critical Commentary: Looked after Children. Time for Change’ (2005) 35 (5) *BJSW* 761
2. S. Shearin, *Kinship Care Placement and Children’s Academic Performance* (Haworth Press 2007); R. Sands, R. Glen and H. Shin, ‘The Voices of Grandchildren of Grandparent Caregivers: A Strengths-Resilience Perspective’ (2009) 80 (2) *Child Welfare League of America* 29.
3. E. Farmer, J. Selwyn and S. Meakings, ‘Other Children say you’re not normal because you don’t live with your parents’ Children’s views of living with informal kinship carers: Social Networks, Stigma and Attachment to Carers’ (2013) 18 *Child and Family Social Work* 25
4. Messing (n 52)
5. O’Brien (n 25)
6. L. Ince, *Making it Alone: A Study of the Care Experiences of Young Black People* (BAAF 2001), 19.
7. Ibid
8. Experience from I. Prince-Olokotor’s personal practice as a Social Worker.
9. K. Winter and O. Cohen, ‘Identity Issues for Looked after Children with no Knowledge of their Origins: Implications for Research and Practice’ (2005) 29 *Adoption and Fostering* 44
10. Ibid
11. National Institute for Clinical Excellence ‘Looked After Children and Young People’ (NICE 2010)
12. A. Buchanan, ‘The Experience of Life Story Work: Reflections of Young People Leaving Care’ (Cardiff University 2014)
13. J. Boddy, *Understanding Permanence for Looked After Children: A Review of Research for the Care Inquiry* (The Care Inquiry 2013)
14. O’Brien (n 25)
15. O’Brien (n 25)
16. S. 34 (1) of The Children Act 1989; Section 8 of The Children and Families Act 2014
17. R. Sen and K. Broadhurst, ‘Contact between Children in out-of-home placements and their Family and Friends Networks: A Research Review’ (2011) 16 (3) *Child and Family Social Work*, 298

the assessment concludes as negative, contact is usually reduced as part of the final care plan to at most once a fortnight and in extreme cases, six or two times a year. The aim of this is to ensure the child settles well in their placement.¹ There is a wealth of research showing that children in kinship care are more likely to have regular and more ‘natural’ contact with their birth family.² However some authors have argued that contact can be problematic and in some cases harmful even where it may appear *prima facie* to be going well.³ In a research conducted by Kiraly and Humphreys, they found that children in kinship care expressed mixed feelings about contact with their birth family.⁴ When the parents were asked, most of them expressed resentment towards the kinship carers.⁵ In some cases the resentment was particularly directed at grandparent carers as the parents attributed their failings as parents to their difficult childhood. They questioned the motivation of the grandparents in wanting to care for their grandchildren as some stated that it was an opportunity for their parents to ‘right the wrong’ from their own parenting. The research however found that a small number of parents believed that kinship care has enabled them to have more regular contact and allowed for siblings to remain together.⁶

Despite the challenges to contact if the relationship between the kinship carer and parents is fraught, research demonstrates that kinship care gives the child a better opportunity to reconnect with their parents at a later date as opposed to non-kinship care where several processes have to take place first.⁷ Opportunities to reconnect could present itself through events in the family such as birth, death, marriages and transitions when families come together.⁸

3.1.4. Protection and safeguarding

Child safety and risk management are at the heart of modern-day social work practice. Legislation, policies, procedures, and regulations provide guidance by which protection and safeguarding of children can be ensured. As earlier discussed, one of the benefits of kinship care is that children are placed with persons they know and trust.⁹ Despite the importance of safeguarding and protection of children, there is a dearth of information on how safe kinship care is for children.¹⁰ It seems that the lack of research in this area could be because kinship placements generally tend to have less professional support and monitoring. To this end, the question then is, what parameter can be used to measure whether children are adequately safeguarded in kinship care. O’Brien has asked whether this question can be answered using statistics from the rates of re-abuse, the number of children removed from kinship homes or by considering stability and disruption rates.¹¹

Despite the seemingly sufficient evidence-based safeguarding data in kinship care, research suggests that the rate of abuse is lower in kinship care. Arguably, kinship placements resonate positive experience for children and often times no child protection issues are identified.¹² Conversely, Nixon in his research concluded that kinship care appears to provide children with the same level of safety from abuse or neglect as non-kinship care.¹³ Hunt and others further supports this finding when they suggested that some kinship placements had major safeguarding issues.¹⁴ In addition, research suggests that the reason it appears that there is less likelihood of safeguarding issues in kinship care is because professionals tend to be more lenient and willing to accept different standard in terms of discipline and environmental conditions.¹⁵ As such O’Brien advocates that there should be no shift in standard when it relates to the protection and safeguarding of children.¹⁶ It can be argued that this is important particularly as kinship care has now been endorsed as a care option in law and the Local

1. D. Roth, ‘Research study on carers’, parents’ and practitioners’ views on contact for children in family and friends care’ in C. Ashley (ed) *Managing Contact: Research findings on Managing Contact with Parents and Relatives for Children Living in Family and Friends Care Arrangements*, (Family Rights Group 2011) 65.
2. Sen & Broadhurst (n 204)
3. S. Moyers, E. Farmer and J. Lipscombe, ‘Contact with Family Members and its Impact on Adolescents and Their Foster Placements’ (2006) 36 (4) *BJSW*, 541.
4. M. Kiraly and C. Humphreys, ‘A Tangled Web: Parental Contact with Children in Kinship Care’ (2015) 20 (1) *Child and Family Social Work*, 106
5. Ibid
6. Ibid
7. O’Brien (n 25)
8. O’Brien (n25)
9. Winokur (n 51)
10. O’Brien (n 25)
11. O’Brien (n 25)
12. E. Farmer (2018) ‘Reunification from Out-of-Home Care: A Research Overview of Good Practice in Returning Children Home from Care’ https://research-information.bris.ac.uk/ws/portalfiles/portal/174570240/web_Reunif_LitRev_12_.pdf [last accessed on 18 May 2023]; S. Wellard, S. Meakings, E. Farmer and J. Hunt (2017) ‘Growing Up in Kinship Care: Experiences as Adolescents and Outcomes in Young Adulthood’ https://kinship.org.uk/wp-content/uploads/2020/02/GUIC_KC_Full_Report_FINAL.pdf [last accessed on 18 May 2023]
13. P. Nixon ‘*Relatively Speaking: Developments in Research and Practice in Kinship Care*’ <https://www.researchinpractice.org.uk/all/> [last accessed on 18 May 2023]
14. Hunt (n 173)
15. Farmer (n 18); Farmer and Moyers (n 19)
16. O’Brien (n 25)

Authority plays a role in providing and supporting this placement. Furthermore, research has raised the issue of intergenerational family dysfunction as a concern stating that the apple does not fall far from the tree.¹ Peter² suggested in his research that social workers expressed their concerns that there is the likelihood of kinship carers colluding with the abusers and they are difficult to work with. Whilst this may be a valid concern, there appear to be little evidence to back this concern. Therefore, this paper takes the view that kinship care in majority of the cases promotes the protection and safeguard of children. Apart from the research in the UK, this paper also draws from international research which also suggests that kinship care has a lower risk of child protection issues.³

3.2. Challenges of kinship care

Research indicates that kinship care plays a unique role in enabling children who cannot live with their birth parents to remain living with people within their family and social network.⁴ Furthermore, kinship care complies with the Article 8 right of the child under the United Nation Convention on the Rights of the Child 1989 hence it has been endorsed as the preferred option in care proceedings.⁵ As discussed in the section above, kinship care has a number of positives, however there are some negatives. Taussing and Clyman suggested that one of the negatives of kinship care is the likelihood that the children may not return to the care of their birth parents.⁶ Also, McCartan *et al* suggested that kinship carers could downplay behavioural difficulties which could in turn have a negative outcome for assessing any special needs or disability.⁷

Despite being the preferred option in enabling children to be cared for within their family and social network, kinship care still experiences a number of challenges. It can be argued that problems for children in kinship care and their careers are sometimes linked to the reason the children went into care in the first instance instead of being kinship care itself.⁸ For example research suggests that children who have experienced abuse prior to going into kinship care placements are likely to display behavioural issues which in turn could lead to the placement breaking down.⁹ It would seem that these researches did not consider the challenges faced by kinship carers and the overall consequences of their experiences. The fact that the majority of kinship carers are grandparents suggests that they are likely to be older individuals who may be facing financial difficulties or experiencing the strains of parenting at an older age, and these factors could further aggravate an already challenging situation.¹⁰ Some of the difficulties and barriers faced by kinship carers such as financial constraints, inadequate support, service delivery and permanency are examined in turn below.

3.2.1 Financial Constraint

Alongside the issue of care and protection of the child, finance is another issue at the heart of kinship care.¹¹ This is because caring for children requires an income to be able to meet most of their basic care needs. Research indicates that majority of kinship carers experience financial hardship either because they are old, retired and on low income¹² or because they had to give up work or reduce their working hours to be able to care for the children.¹³ As already discussed under the types of kinship care above, kinship carers include family and friends who have been approved as kinship foster carers, or those who are caring for a child under a Child Arrangements Order or Special Guardianship Order. These forms of carers are entitled to support from the Local Authority however in England and Wales, the level of support including financial support varies according to the legal status of the child being cared for.¹⁴

1. Nixon (n 28); Hughes (n 156)
2. J. Peter 'True Ambivalence: Child Welfare Workers Thoughts, Feelings and Beliefs about Kinship Foster Care' (2005) 27 *Children and Youth Services Review*, 595.
3. S. Font, 'Are Children Safer with Kin? A Comparison of Maltreatment Risks in out-of-home care' (2015) 54 *Child Youth Service Review* 20
4. M. Connolly, M. Kiraly, L. McCrae and G. Mitchell, 'A Kinship Care Practice Framework: Using a Life Course Approach' (2017) 47 *BJSW* 87
5. C-H. Lin, 'Evaluating Services for Kinship for Kinship Care Families: A Systematic Review' (2014) 36 *Children and Youth Services Review* 32
6. H. N. Taussing and R. B. Clyman, 'The Relationship between time spent living with Kin and Adolescent Functioning in Youth with a History of out-of-home Placement' (2011) 35 *Child Abuse and Neglect* 78; T. Bell and E. Romano, 'Permanency and Safety Among Children in Foster Family and Kinship Care: A Scoping Review' (2017) 18 (3) *Trauma, Violence and Abuse* 268
7. C. McCartan, L. Bunting, P. Bywaters, G. Davidson, M. Elliot and J. Hooper, 'A Four-Nation Comparison of Kinship Care and Deprivation' (2018) 17 (4) *Social Policy and Society* 619
8. Hughes (n 156)
9. S. A. Font, 'Is Higher Placement Stability in Kinship Foster Care by Virtue or Design?' (2015) 42 *Child Abuse and Neglect* 99; Winokur & others (n 163)
10. T. Washington, Q. L. Walton, H. Kaye, J. S. Hong, and B. Cook, 'Exploring self-care practices of African American informal kinship caregivers' (2023) *Child & Family Social Work* <https://onlinelibrary.wiley.com/doi/abs/10.1111/cfs.13047> [last access 21 April 2024]
11. O'Brien, (n 25)
12. Geen (n 51)
13. P. McGrath and L. Ashley, 'Kinship Care: Financial Allowances Survey 2022' <https://kinship.org.uk/wp-content/uploads/Kinship-Financial-Allowances-Survey-2022.pdf> [last accessed 22 May 2023]
14. Wade and others (n 120)

With regards to kinship foster carers, Nandy and Selwyn have observed that although kinship foster carers are entitled to the same financial entitlement as non-kinship foster carers, this is not always reflected in practice.¹ They submitted that the children being cared for may be entitled to the same support as children in non-kinship foster care when they leave care like being entitled to the leaving care grant but the payment to the carers is disproportionate to non-kinship foster carers.² It is worth mentioning that this disparity is not peculiar to England and Wales as research shows that it affects other kinship carers internationally such as Denmark,³ USA⁴ and Australia.⁵ Munby J in his ruling in *Re L and others v Manchester City Council*⁶ and *Re R and another v Manchester City Council*⁷ viewed this disparity in payment as discrimination and a breach of Articles 8 (right to family and private life) and 14 (right to enjoy those rights without discrimination) of the European Convention of Human Rights. Despite the courts position on this, some local authorities continue to pay kinship carers less than non-kinship carers hence, McGhee and others have opined that kinship care appears to be financially attractive for cash-strapped local authorities as they can get away with paying less for the same job.⁸ With regards to kinship carers with Child Arrangements Orders and Special Guardianship Orders, the issue of finances is also of concern. This is because although they are classed as kinship carers and therefore entitled to financial support, this support is discretionary and means tested respectively.⁹ Arguably, it seems that the Local Authorities view to pay kinship carers less may stem from the perception that they are caring for family members and as such payment would raise a question as to their sense of family loyalty and affection. For Geen, this perception raises two questions; firstly, whether family members should be paid for what they should be doing naturally and secondly, the balance between family and state responsibility.¹⁰ Thus, Geen succinctly stated that:

The complex web of policy and practice that has evolved around licensure and payment is another factor that complicates efforts to adequately and equitably compensate kin caregivers. Moreover, the resolution of these concerns is significantly influenced by broader societal and political debates about where the line should be drawn between family obligation and governmental responsibility.¹¹

In practice, kinship carers have been known to have this self-perception that they are not agency workers who require payment. They believe that there are relatives who have stepped in to care for their relatives' children. It could be fairly argued that the fact that they may feel this way is not a justification for less financial remuneration.¹² This is demonstrated in a recent survey by Family Rights Group, where 681 kinship carers were asked if becoming a kinship carer has caused them financial hardship. 74% (503) reported to having experienced significant financial hardship while 10% (68) reported being unsure.¹³ Some of the kinship carers reported that they had to take several periods of unpaid leave to enable them attend training as they were not entitled to any form of paid leave, others reported that they have to give up work completely and rely on state benefits as they were caring for babies while others reported that they were led to believe that the Local Authority would support them financially but were not told that this was for a limited period of time.¹⁴ The survey also highlighted that most of the kinship carers due to lack of finances were unable to afford a holiday which meant that the children were unable to have holidays.¹⁵ In summary, although some kinship carers are reported to receive some financial support from the Local Authority, this survey confirms research that they are more disadvantaged because they receive less money when compared with non-kinship carers irrespective of the fact that the children they care for may have some specific needs.¹⁶

1. S. Nandy and J. Selwyn, 'Kinship Care and Poverty: Using Census Data to Examine the Extent and Nature of Kinship Care in the UK' (2013) 43 *BJSW* 1649
2. Ibid
3. S. H. Anderson and P. Fallesen, 'Family Matters? The Effect of Kinship Care on Foster Care Disruption Rates' (2015) 48 *Child Abuse and Neglect* 68
4. J. D. Berrick and J. Hernandez, 'Developing Consistent and Transparent Kinship Care Policy and Practice: State Mandated, Mediated and Independent Care' (2016) 68 *Children and Youth Services Review* 24
5. R. Breman, Peeling Back the Layers: Kinship Care in Victoria. Complexity in Kinship Care (*Baptcare 2014*)
6. [2001] EWHC Admin 707
7. [2002] 1 FLR 43
8. J. McGhee, L. Bunting, C. McCartan, M. Elliott, P. Bywaters and B. Featherstone, 'Looking after children in the UK – Convergence or Divergence?' (2018) 47 (5) *BJSW* 1176
9. Wade (n 120)
10. Geen (n 51)
11. Geen (n 51 at p. 144)
12. Report of the Parliamentary Taskforce on Kinship Care (September 2020) 'First Thought Not Afterthought' https://proceduresonline.com/trixcms1/media/8050/kinshipcare_parliamentaryreport-sept20-2.pdf [last accessed on 22 May 2023]; V. O'Brien, 'Relative Care: A Different Type of Foster Care- Implications for Practice' in G. Kelly and R. Gilligan (ed) *Issues in Foster Care: Policy Practice and Research* (Jessica Kingsley 2000)
13. Ashley and Braun, (n 174)
14. Ibid
15. Ibid
16. Ibid

3.2.2 Inadequate support

It seems that the profile of children in kinship care is the same as children in non-kinship care in terms of their background experiences and assessed needs.¹ As discussed earlier, children become looked after either by relatives or non-relatives due to certain issues such as parental mental health, parental substance and/or alcohol misuse, parental criminal activities, incarceration of parents, domestic violence or neglect.² Apart from these experiences in the care of their birth parents, Connolly argues that these children have also experienced loss stemming from separation from their parents.³ Based on their comparable experiences, it can be argued that these children irrespective of their placements are at greater risk of displaying emotional or behavioural difficulties and therefore require support.

Similarly, research has also indicated that the profile of kinship carers is different from non-kinship carers in terms of age, financial stability, education, health and choice.⁴ While non-kinship carers are mainly young, educated and skilled in their field of study and have decided to take on the role of being foster carers, the same cannot be accurately said for kinship carers. Grandparents have been reported to form the largest kinship carer group with an average age of 65 years or more with majority of them having some long term health problems or disability which is likely to affect their day to day activities.⁵ Research also shows that this age creates some practical challenges for these kinship carers for example, grandparents struggling with modern parenting practices.⁶ An example of this will be a case where the grandparent has some health problems and although minor which enabled them have a successful assessment, impacts on their ability to engage in physical activities with the children such as going to the park and/or playing football. Furthermore, kinship carers have been reported to be more likely to live in disadvantaged neighbourhoods with the highest rates of poverty of any housing type.⁷ Research indicates that their accommodation may be inadequate due to insufficient room and this is possibly because they did not consider becoming carers.⁸ Another major challenge for kinship carers is the fact that they are likely to be unprepared for the task ahead. This includes physical, financial and mental preparedness. Research reports that most kinship carers agreed to undertake the care of their kin as they felt it is expected of them as family members without understanding the commitment this service requires.⁹ Unlike non-kinship foster carers who are able to opt out of caring for children and possibly retire, kinship carers do not feel this is an option for them.

Research suggests that despite these differences in the profile of carers and the sameness in the needs of the children, kinship carers receive less support and limited access to services.¹⁰ Regardless of the children's needs, it is expected that their carers should provide them with the required support, hence the importance that these carers are provided with the relevant support. Research, both domestic and international has identified a range of support services for kinship carers such as peer group contact, respite care, therapeutic interventions, counselling, practical assistance, support with managing contact with birth parents.¹¹ Despite this, research has shown that in England and Wales, many children and their kinship carers are not receiving the support they need.¹² For Wellard, this could be because the carers have not been provided with the necessary information.¹³ However, for Hunt and Waterhouse, the support kinship carers receive is not based on the identified needs of the child or the carer but on the legal status of the placement, and this seems to be more plausible in practice.¹⁴

1. C. Wilderman and J. Waldfogel, 'Somebody's children or Nobody's Children? How the Sociological Perspective could enliven Research and Foster Care' (2014) 40 (1) *Annual Review of Sociology* 599; J. Aldgate, 'Living in Kinship Care: A Child-Centred View' (2009) 33 (3) *Adoption and Fostering* 51; E. Farmer, 'How do Placements in Kinship Care compare with those in Non-Kin Foster Care: Placement Patterns, Progress and Outcomes?' (2009) 14 (3) *Child and Family Social Work* 331
2. Farmer (n 251)
3. M. Connolly, 'Kinship Care: A Selected Literature Review' (2003) 25, *Social Work Now* 24- 30 https://www.researchgate.net/publication/259384781_A_kinship_care_literature_review.pdf [last accessed on 27 June 2023]
4. O'Brien (n 25)
5. S. Nandy, J. Selwyn, E. Farmer and P. Vaisey, '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' https://researchinformation.bris.ac.uk/ws/portalfiles/portal/189942972/Final_Kinship_Care_Report.pdf [last accessed on 27 June 2023]; J. Hunt, 'Grandparents as substitute parents in the UK' (2018) 13 (2) *Contemporary Social Sciences* 175
6. S. Wellard, 'Too Old to Care' <https://www.bl.uk/collection-items/too-old-to-care-the-experiences-of-older-grandparents-raising-their-grandchildren-1> [last accessed on 27 June 2023]
7. McCartan, et al (n 227)
8. Hunt and Waterhouse (n 95)
9. S. E. Crewe and R. G. Wilson, 'Kinship Care: Family Tradition and Social Policy in the African American Community' (2006) 22 *Journal of Health and Social Policy* 1
10. Connolly (n 252); O'Brien (n 25)
11. A. Gautier, S. Wellard and S. Cardy, 'Forgotten Children: Children growing up in Kinship Care (*Grandparents Plus* 2013); J. Wade, J. Dixon and A. Richards *Special Guardianship in Practice* (BAAF 2010)
12. Hunt and Waterhouse (n 95)
13. Wellard (n 256)
14. J. Hunt and S. Waterhouse, 'Understanding Family and Friends Care: The Relationship between the Need, Support and Legal Status: Carer's Experiences' <https://www.scie-socialcareonline.org.uk/understanding-family-and-friends-care-the-relationship-between-need-support-and-legal-status-carers-experiences/r/a11G0000017xA3IAI> [last accessed on 27 June 2023]

3.2.3. Service Delivery

As earlier highlighted, kinship care is an increasingly important option of care where children are deemed to be at risk of significant harm in the care of their parents and therefore cannot reside with them. Research has suggested that kinship care is a unique and complex area of work and as such requires specialist management.¹ According to O'Brien, one of the challenges of kinship care is that despite its complexity and uniqueness, it lacks the conceptual model to aid with understanding and delivering of services to kinship carers.² She argues that kinship care has been grafted into the already existing foster care system.³ The challenge with this is that whilst foster carers are well prepared and have chosen to be assessed as foster carers, kinship carers in majority of cases find themselves thrown into the situation irrespective of their personal issues. A manager voiced this view during an interview wherein they were quoted to say: "We are dealing with complex families who have often historical issues and relationship difficulties and it's just so much more complex than your mainstream fostering ..."⁴ These carers have to deal with the perceived trauma of having professionals in their lives and in some cases deal with difficult family members who may be seeing them as people who are stopping them from having their children back. Also, research has suggested that feelings of love, sense of duty, loyalty and rivalry are some of the conflicting emotions within these family situations.⁵ To this end, it can be argued that kinship care requires specific specialist knowledge, skills, sensitivity, understanding and commitment to enable these emotions to be considered and the right support to be provided.⁶

In Wales, social workers have been advised to adopt the "What matters conversation"⁷ as it is likely to give a clearer picture of the individual and the support they need however, it would appear that the conversation takes place but there are no services in place to meet the needs identified. This, it can be fairly argued defeats the whole essence of working in a person-centred approach as the carers are expected to talk about what they would want support with but afterwards they are offered something which may appear similar in some cases but which actually is not what was needed. It is important to note that the term "what matters conversation" is not specifically mentioned in the Social Services and Well-Being (Wales) Act 2014 however, it can be argued that this is a theme that runs through the Act. Section 2 and 6 of the Act⁸ lay down the underpinning principles of the Act to include 'well-being' and regard for the voice of the service user. In practice, there are currently specialist connected persons' team however the Local Authority still holds much of the power and regulatory responsibility.⁹ Although the assessment process for kinship foster carers is different from the assessment of non-kinship carer, there is concern that the assessment approaches are the same as the one used for non-kinship foster carers. More so, the support offered appears to be a "one size fits all" support which does not in practice acknowledge how the needs and situations of the carers differ.¹⁰ Whilst it is recommended that Local Authorities have a specialist team, this paper argues that it is not a fundamental requirement for adequate service delivery. A specialist team requires adequate resources to be able to deliver the right support to kinship carers.

4.0. Concluding remarks

The issues examined in this paper are: (i) whether kinship carers and the children are disadvantaged because the level of support available to them is dependent on their legal status rather than the identified needs of the child, and (ii) whether kinship care placement promotes the wellbeing of the child in terms of providing stability, identity formation, affirmation of the child's self-esteem and continuity of cultural heritage.

The first question is partly addressed by examining the concept of kinship care and the legal framework underpinning this option of care in England and Wales. It found that kinship care is an endorsed option for alternative care. Furthermore, the question is answered by assessing the legal routes or options available to kinship carers which includes kinship foster carers, special guardianship orders, child arrangements order and placement under s. 20 of the Children Act in England, and S. 76 of the Social Services and Well-Being (Wales) Act 2014. In examining these options, the paper considered the support available under each option and subsequently argued that although kinship care is considered a reliable passport to support for both carers and the children cared for, when compared with non-kin carers, they are at a disadvantage in terms of financial support

1. J. Hunt, 'Practising in kinship care: The perspectives of specialist social workers' (2021) <https://kinship.org.uk/wp-content/uploads/Joan-Hunt-report-merged-final.pdf> [last accessed on 27 June 2023]
2. O'Brien (n 25)
3. O'Brien (n 25)
4. Hunt (n 254 at 157)
5. E. Farmer and S. Moyers, *Kinship Care: Fostering Effective Family and Friends Placements* (Jessica Kingsley Publishers 2008) 73
6. Hunt (n265)
7. A. James and L. Clements, 'What Matters to Carers? Is a 'What Matters' Conversation an Assessment?' (2017) 1 *Wales Social welfare Law On-line* <https://www.lukeclements.co.uk/journal/journal-2017-volume-1/> [last accessed on 27 June 2023]
8. Social Services and Well-Being (Wales) Act 2014
9. O'Brien (n 25)
10. J. Davey, 'The Care of Kin: A Case Study Approach to Kinship Care in the South of England and Zululand, South Africa' (*Bournemouth University 2016*) https://eprints.bournemouth.ac.uk/25573/1/DAVEY%2C%20Jill%20Catherine_Ph.D._2016.pdf [last accessed on 27 June 2023]

and other ancillary support. This led to an examination of some of the actual challenges encountered by kinship carers, and the paper argued that kinship carers not only face challenges in terms of financial support but in the delivery of support for identified needs. In addressing the second question, the paper examined the benefits of kinship care and found that kinship care promotes the overall wellbeing of the child, provides stability for the child, and enhances the child's self-esteem by promoting their identity and cultural heritage. Hence, the paper argues that although there might be concerns with kinship care and it cannot be considered a panacea for all cases, the positive outcomes and effect of kinship care cannot be overlooked.

4.1.1 Implication for policy and practice

A recurring theme in this paper is the observed distinction in the support offered to kinship carers compared to non-kin foster carers. Although legislation¹ and decisional law² provisions indicate that this distinction should not be, it continues to exist. This is evidenced in a recent research study by the Family Rights Group.³ As earlier identified in this paper, research demonstrates that kinship carers are more likely to be economically vulnerable. This is because kinship carers arguably experience high rates of poverty both financially, educationally and in terms of suitable accommodation when compared to non-kinship carers who are considered to be well placed and prepared to take on the role. To this end, this paper proposes that a kinship care financial scheme be introduced to cater for the specific needs of kinship cares and how these needs can be met.

One of the concerns highlighted in this paper relates to the assessment process, specifically the approaches or tools adopted. Research indicates that kinship carers' experiences of becoming care givers differ from that of non-kinship carers; however, the assessment process is the same for both groups of carers. As demonstrated in this paper, commentators have suggested that the assessment should be flexible but rigorous, empowering, supportive, enabling, inclusive, respectful and sensitive whilst not diminishing the standard to ensure that the welfare and safeguard of the child is paramount.⁴ This, the paper argues will make the process friendlier and less stressful for prospective kinship carers. To achieve this, assessing social workers require appropriate training to develop the skills in engaging families so that they can provide a bespoke service which is inclusive and empowering. Furthermore, social workers need training on working with cultural diversity. England and Wales is a multi-cultural society with diverse cultures and values, therefore knowledge of working and embracing cultural diversity is needed to enhance their skills. Finally, the central government need to invest in the provision of appropriate training for social workers and to ensure that there are appropriate support services for the kinship carers. This is because Local Authorities require finance to be able to provide the social workers with the required training and ensure that the appropriate services are available for kinship carers. To this end, central government should be accountable for providing the needed financial support to meet the identified needs for both the children and their caregiver.

4.1.2 Possible future research direction

One probable area for further research into kinship care in England and Wales could focus on the long-term impacts of kinship care on the children involved. This could engage a longitudinal assessment tracking the academic, emotional, and social development of children placed in kinship care compared to those in traditional foster care or living with their birth parents. Understanding the outcomes for these children over time could provide valuable insights into the effectiveness of kinship care as a placement option.

1. See S.14F CA 1989

2. *Re L and others v Manchester City Council* [2001] EWHC Admin 707; *Re R and anor v Manchester City Council* [2002] 1 FLR 43; *R (on the application of X) v London Borough of Tower Hamlets* [2013] EWHC 480 (Admin)

3. Ashley and Braun (n 174)

4. M. McHugh, *A Framework of Practice for Implementing a Kinship Care Program* (University of New South Wales 2009); J. Hunt and S. Waterhouse (n 265)