



KINSHIP CARERS AND UNIVERSAL CREDIT - LESSONS IN COMPLEXITY

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The Child Poverty Action Group (CPAG) in Scotland works for the one in four children in Scotland growing up in poverty. We collect evidence from families living in poverty and campaign for solutions to bring about a society where children have a fair chance in life free from hardship. We provide training, advice and information on social security to frontline workers to make sure families get the financial support they need.

Introduction

For the past 14 years, CPAG in Scotland has been providing advice, guidance and resources to help kinship carers, and those who support them, navigate the system of financial support.

In 2015, we published *Coping with complexity – financial support for kinship carers in Scotland*.¹ At this point, universal credit was still, by and large, in the future - now it is a central plank of the social security system and many kinship carers have had to look to the universal credit system for support. There are lessons to be learned from the challenges that carers have faced in trying to navigate the universal credit system, and now seems like a good time to take stock.

This short report sets out some of the difficulties and anomalies that the last few years have revealed in relation to universal credit, and makes recommendations for the various levels of government and different agencies who may be involved in providing support to Scottish kinship carers.

¹ cpag.org.uk/news-blogs/news-listings/policy-report-coping-complexity-financial-support-kinship-carers-scotland

Kinship care

We use the term ‘kinship care’ to describe the situation in which family or friends take on the full-time care of a child on a permanent or semi-permanent basis. Some kinship carers are caring for children who are ‘looked after’ by the local authority, which means that the local authority has enhanced responsibilities in relation to safeguarding their welfare.² The distinction between this group of kinship carers and those who are caring for children who are not ‘looked after’ can be important, both in terms of the level of support a kinship carer receives from the local authority and also in terms of the implications for social security entitlement.

Universal credit

Universal credit (UC) is replacing means-tested benefits and tax credits for working age claimants. The following benefits and tax credits are being replaced by universal credit:

- income support
- income-based JSA
- income-related employment and support allowance
- housing benefit (for most claimants under pension age)
- working tax credit
- child tax credit

UC can include amounts for dependent children (child element), an amount to help with rent (housing costs element), an amount to help people in paid work with the cost of child-care (childcare costs element) as well as additional elements if the claimant is caring for a disabled person or they are unwell.

There are special rules in the UC system relating to children who are looked after by the local authority (discussed in detail below).

Local authority financial support to kinship carers

In 2015, the Scottish Government and COSLA announced a commitment on the part of local authorities to pay certain kinship carers a kinship care allowance. The aim is that there should be parity between the amount the local authority pays for kinship care allowances and fostering allowances (not including fees).³ In July 2016, National Guidance was published (*Children and Young People (Scotland) Act 2013: National Guidance on Part 13: Support for Kinship Care*).⁴

These arrangements cover:

² Section 17(6) Children (Scotland) Act 1995

³ www.gov.scot/policies/looked-after-children/kinship-care/

⁴ www.gov.scot/publications/national-guidance-part-13-children-young-people-scotland-act-2014/pages/1/

- kinship carers of looked after children;
- kinship carers where the child is subject to a kinship care order (under section 11 of the Children (Scotland) Act 1995 or the carer is the child’s guardian under section 7 of the Children (Scotland) Act 1995; *and*
 - the child was previously looked after by the local authority; *or*
 - the child is at risk of becoming looked after; *or*
 - the local authority was involved in placing the child with the kinship carer.

The Scottish Government guidance suggests that local authorities deduct any ‘child-related benefits’ to which the kinship carer is entitled, and that a foster carer would not be entitled, from the amount of the allowance. The guidance states that child benefit and child tax credit (although not the disability or severe disability element) should be deducted if the kinship carer is eligible for these benefits. According to the guidance, guardian’s allowance, if payable, should not be deducted.

Example

Betty cares for her eight year old grandson, Joe, and has been granted a kinship care order. Before this Joe was ‘looked after’ by the local authority. Betty gets child benefit and child tax credit for Joe and this amounts to £86.25 a week. The local authority’s fostering allowance is £150 a week. The local authority deducts £86.25 from this and pays Betty £63.75 a week kinship care allowance.

The guidance has not been updated to include guidance relating to universal credit.⁵ We understand that local authorities deduct the ‘child element’ of universal credit from the kinship care allowance in the same way as they would deduct child tax credit.

The Scottish Government’s current Programme for Government includes a commitment to introduce a minimum level of kinship care allowance across all Scottish local authorities:

This year, we will work with local authorities to introduce a **minimum national allowance for foster and kinship care**, to improve consistency and transparency for children, their families and their carers.⁶

⁵ www.gov.scot/publications/national-guidance-part-13-children-young-people-scotland-act-2014/pages/9/

⁶ www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/pages/5/

Case studies

In this report we use a series of case studies to highlight various issues, problems and anomalies that arise for Scottish kinship carers who are claiming, or trying to claim, universal credit.

Child element or not

Kinship carers caring for a child who is 'looked after' by the local authority are not eligible for the child element of universal credit.⁷ This gives rise to various difficulties, one of which is that the Department for Work and Pensions (DWP) does not always apply the rule correctly. In other words, in spite of having all the correct information about the kinship carer's situation, the DWP incorrectly includes the child element in the kinship carer's UC award.

We are aware of numerous examples of this happening, often in spite of strenuous efforts by the kinship carer or by an adviser on their behalf to try to stop the DWP making the incorrect UC payments.

This gives rise to two significant and inter-connected problems. Firstly, the kinship carer is overpaid UC. All overpayments of UC are legally recoverable (in other words, they must be paid back), regardless of how they have arisen, and so when the DWP finally decides that the payment was made in error it will almost inevitably recover the overpayment from the kinship carer, usually by deduction from future benefit entitlement. A kinship carer in this situation can ask that the DWP use its discretion not to recover the overpayment, but this can be an uphill struggle, as is demonstrated by the fact that in 2020/21 the DWP waived only 10 of 337,000 overpayments classified as caused by official error (i.e. the DWP's own error).⁸

The connected problem relates to the kinship carer allowance paid by the local authority. The local authority generally deducts the child element of UC if the kinship carer receives it. If the kinship carer is receiving the child element incorrectly, and the local authority deducts the equivalent amount on an ongoing basis from their kinship care allowance, what happens when the DWP realises its mistake and claws back the overpaid UC from the kinship carer? The result is likely to be a significant financial loss for the kinship carer.

⁷ Regulation 4 and 4A Universal Credit Regulations 2013. If there is a permanence order in place in respect of a child, the child is looked after by the local authority, but the kinship carer may have parental rights vested in them. In this situation, it is possible that the kinship carer's UC would have the child element included. However, the UC rules appear to prevent this because they are excluded as 'foster carers'. It is unclear whether this is the DWP's intention. CPAG in Scotland has requested clarification from the Department for Work and Pensions.

⁸ https://www.whatdotheyknow.com/request/universal_credit_where_a_waiver

Case study

Kinship carer is looking after her nephew. There is a compulsory supervision order in place, which means he is a looked after child. The kinship carer has to give up her job to look after her nephew and claims universal credit and child benefit. She tells the DWP that there is a compulsory supervision order in place, but in spite of having this information, the DWP includes the child element in her universal credit. The child element is £282.50 a month, equating to £65.19 a week.

The local authority pays the kinship carer a kinship care allowance: it is the local authority's policy to deduct child benefit and the child element of universal credit from the level of its fostering allowance and they do so in this kinship carer's case. The local authority's fostering allowance is £160 a week and so they pay this kinship carer £73.66 a week (£160 less child benefit of £21.15 and universal credit child element of £65.19).

The kinship carer gets her benefits checked out and realises that the DWP is paying the child element in error. In spite of noting this in her UC journal several times, this is only corrected after six months, by which time she has been overpaid £1695 universal credit. The DWP starts recovering the overpayment by deductions from her ongoing payments of universal credit.

Of course, the kinship carer has not really had any actual advantage from the overpaid UC child element, as the local authority has deducted it from the kinship care allowance and would not have done so if her UC had been paid correctly.

What about the kinship carers of looked after children where the DWP does get things right? They will not receive the child element in their UC, but there can be wider effects particularly if the kinship carer is in paid work or if the child has a disability.

A kinship carer of a looked after child does not get the child element for that child because the child does not 'count' as their dependant for UC purposes. This also means that if the kinship carer is working they will not get the 'work allowance' (an amount you can earn before your UC is affected) unless there is another reason for the kinship carer to get this - for example, that they have another child who does count as their dependant. It also means that they will not get any help with childcare costs for the child via UC. This can result in a considerable financial loss as this case study shows:

Case study

Kinship carer who is aged 45 and single. She cares for her nephew, aged eight, who is 'looked after' by the local authority. She works and has net monthly earnings of £1,400. Her monthly rent on her two-bedroom housing association flat is £400 and she pays £200 per month in childcare costs. The kinship carer is not entitled to UC. This is because her UC calculation does not include a 'child element' for her nephew; does not include any help with childcare costs; and does not include any 'work allowance'. If this carer's UC did include a child element for her nephew, she would also get help with childcare costs and would have more of her earnings ignored. If her nephew were not a looked after child the kinship carer's UC entitlement would be £591.59 a month (£136.52 a week).

Although this kinship carer will receive a kinship care allowance from the local authority, this is not likely to exceed this figure by much and might actually be lower. This means that a kinship care in this situation is - overall - getting little or no additional help in recognition of the kinship care role they have taken on.

In UC, the child element is higher if the child you care for has a disability and is entitled to a disability benefit like child disability payment or disability living allowance. If the kinship carer is not eligible for the child element, then they will not get the disabled child addition either. The amount of the disabled child addition is either £128.89 or £402.41 a month depending on how severely affected the child is by the disability.

Case study

Kinship carer is 56 and single. She is caring for her grandson who is aged 10 and looked after by the local authority. The grandson has a disability and is getting disability living allowance highest rate care component and lower rate mobility component. The kinship carer is not able to work at the moment because of her grandson's needs and is claiming UC. Because the child is looked after by the local authority the kinship carer does not get the child element or the disabled child addition in her UC. This amounts to a 'loss' of £684.91 a month (£282.50 child element + £402.41 disabled child addition).

*It is important to consider the interaction with local authority kinship care allowances. The local authority will not deduct any amount from the kinship care allowance in respect of UC child element, because this kinship carer doesn't receive it. However, if a kinship carer of a non-looked after child **was** receiving the child element and the disabled child addition in their UC, we would expect the local authority deduct the child element but **not** the disabled child addition in line with Scottish Government guidance.⁹ This*

⁹ *Appendix E Children and Young People (Scotland) Act 2014: National Guidance on Part 13: support for kinship care.* This guidance suggests that local authorities deduct any child-related benefits to which a kinship carer is entitled and that a foster carer would not get, from the amount of the kinship care allowance. However, the guidance also states that the disabled child elements of child tax credit should not be

potentially disadvantages kinship carers caring for a looked after a child who has a disability. There is no evidence that local authorities increase the level of allowance to compensate kinship carers of disabled children.

Two-child limit and benefit cap

Since 6 April 2017, a 'two-child limit' has applied to child elements in universal credit (UC) (and to child tax credit). For most people this means that you cannot get the child element of UC for a child born on or after 6 April 2017 if you are already getting UC child element for two or more children. There are some exceptions, including one for some kinship carers arrangements, called 'non-parental caring arrangements' in this context.

In the Scottish context children in kinship care are exempt from the 'two-child limit' if:

- the kinship carer has a kinship care order under section 11 of the Children (Scotland) Act 1995; *or*
- the kinship carer is appointed as guardian under section 7 of the Children (Scotland) Act 1995; *or*
- the kinship carer is entitled to guardian's allowance in respect of the child or children; *or*
- the kinship carer has parental responsibilities 'vested' in them by a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007; *or*
- one of the above bullet points applied prior to the child's 16th birthday and the kinship carer has continued to be responsible for the child; *or*
- the kinship carer has undertaken care of the child or children where it is likely that otherwise they would have been looked after by the local authority.

This means that even if a kinship carer already has two or more dependent children and starts caring for a child born on or after 6 April 2017 in one of these circumstances, they can get the child element in their UC for the child who has come to live with them, providing they satisfy the normal conditions of entitlement. Equally, if a kinship carer takes on the care of 'exempt' kinship child/ children, and then has birth children, the kinship child/ children are 'disregarded' for the two-child limit. Note: this is only usually of relevance to kinship carers of non-looked after children as a kinship care would not get the child element for a looked after child.

This exemption from the two-child limit for some kinship carers is, of course, welcome. However, it must be viewed in the wider context of its interaction with other social security restrictions: in particular, with the 'benefit cap'. The benefit cap operates to 'cap' the total amount that a claimant can receive from a range of social security benefits. For people living outside Greater London, the cap is set at £1,666.67 a month if you have a dependent child or children. If a person's benefits are capped, the deduction is

deducted. The guidance has not been updated to reflect the roll-out of UC, but if local authorities are following the logic of this guidance they should disregard the disabled child addition in UC as it is, in effect, the equivalent of the disabled child element in child tax credit.

made from their UC (or housing benefit), but other benefits, such as child benefit, are taken to account when deciding whether they are over the level of the cap.

Some people are exempt from the benefit cap: the exemptions mainly relate to being in receipt of a disability or carer benefit or having recently been in paid work. None of the exemptions relate directly to being a kinship carer: the only one that has potential relevance to the fact that a person is a kinship carer is if the claimant is getting guardian's allowance. Some kinship carers will be getting guardian's allowance, but not many as entitlement depends on the child being an orphan (or effectively being an orphan because one parent has died and the other, for example, is a long-term prisoner).

As a result of the benefit cap, a kinship carer who is exempt from the two-child limit, may find that they are actually no better off than if they were not exempt.

Case study

A couple with two children, take on care of their niece and nephew and have a kinship care order for both. The children would otherwise have become looked after by the local authority. Their rent is £450 a month. Neither of them is working just now. For them the benefit cap is £1666.67 a month. Their full UC is £1953.65 a month and their child benefit is £273.65 a month. The total income for benefit cap purposes is £2227.30 a month. The excess over the cap is £560.63 and this amount is deducted from their monthly UC before they receive it. This is actually more than the two child elements that are included in their UC calculation for the two children in the kinship arrangement (£474.16 a month). In other words, the exemption from the two-child limit is irrelevant.*

Inevitably, this has relevance for the local authority kinship carer allowance. If the local authority does not fully understand the implications of the benefit cap, it may deduct the amount of the two child elements from the maximum kinship care allowance, even though the kinship carers are not actually receiving this amount.

**£509.91 (standard allowance) + £993.74 (child element x 4) + £450.00 (housing costs element)*

How local authorities work out what to deduct from kinship care allowance

The agreement between the Scottish Government and local authorities is that the kinship care allowance should be paid at a rate equivalent to the local authority's fostering allowance rate. The Scottish Government guidance advises local authorities to deduct from the amount of their fostering allowance any 'child-related' benefits (with certain exceptions) that the kinship carer receives that a foster carer would not.¹⁰ The guidance refers specifically to child benefit and to child tax credit, which was the dominant means-tested, child-related benefit at the point the guidance was published. The guidance does not offer any useful direction on universal credit, now a much more significant issue for kinship carers.

¹⁰ <https://www.gov.scot/publications/national-guidance-part-13-children-young-people-scotland-act-2014/pages/9/>

Although UC is replacing child tax credit, it is difficult for local authorities to apply the principle of the guidance to UC, except in the most straightforward situations. The reason for this is that the ‘child element’ of UC, the part that replaces child tax credit, is only one element of UC. This, of course, is completely different from child tax credit, which only provides support that relates to a dependent child or children.

Where a kinship carer receives maximum UC, it should be clear how much of their UC entitlement relates to the child element (either £282.50 or £237.08 a month at 2021/22 rates). In such a situation, we would expect the local authority to deduct this amount -translated into a weekly figure - from the amount of the local authority’s fostering allowance rate, in addition to any child benefit the kinship carer receives for the child. The difficulties arise where a kinship carer is not receiving maximum UC because it is being reduced by other income they have, such as earnings.

Case study

Kinship carer caring for two grandchildren aged 10 and 8. She has a kinship care order in respect of both of the children. Before this, the children were looked after under a compulsory supervision order. The kinship carer is working and earns £1,770 net a month. She lives in housing association house and her rent is £400 a month. She claims universal credit.

Her monthly maximum universal credit amount is made up of the following elements (note: the child element is correctly included because the children are no longer looked after by the local authority):

Standard allowance: £324.84

Child element 1: £282.50

Child element 2: £237.08

Housing cost element: £400

This totals £1244.42 a month. This, however, is not the amount she receives. There is a deduction from the maximum UC because she has income from earnings. In her case, the deduction would be £789.25 a month, leaving her with UC entitlement of £455.17 a month. The elements of UC are not ‘tapered away’ in a particular order.

*If this carer received the maximum amount of UC, we would expect the local authority to deduct the full amount of the child elements: in this case, £519.92 a month (around £120 a week). But this carer is not receiving that amount as the **total** of her UC entitlement AND the amount she does receive is not only aimed at supporting the children, but also to help with the rest of the household expenditure including the rent.*

Conclusion

In this short report, we are seeking to highlight some of the difficulties and anomalies which have come to our attention through our second-tier advice service and Early Warning System. They create real problems for kinship carers, for those advising or supporting them and for local authorities. In some situations, the issues raised in this report will cause financial hardship for kinship carers and the children for whom they care.

Recommendations

- **For all:** identify areas of good practice, particularly in relation to welfare right advice, and promote as widely as possible. Our experience indicates that when local authority staff and kinship carers have access to high quality benefits advice they are better able to navigate the complexities of the system and avoid some of the potential pitfalls.
- **For Scottish Government:** update guidance provided for local authorities on financial support to kinship carers to include guidance on universal credit issues.
- **For UK government:** consider exempting kinship cares from the benefit cap; and DWP to improve systems to identify kinship carers of looked after children and pay UC correctly.
- **For local authorities:** to consider not deducting the child element from kinship care allowance where it is being paid in error and will, in all likelihood, eventually be recovered from the kinship carer. We are aware that some local authorities already do follow this practice.

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