

Kinship carers

Possible benefit entitlement and potential issues when claiming benefits

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Kinship carers

Possible benefit entitlement and potential issues when claiming benefits

By Bethan Evans, Training Support Manager

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1 Introduction

The Scottish Executive is developing its national fostering and kinship care strategy. As part of the research for this work it became apparent that an understanding of the benefit system as it applies to kinship care was required. This report aims to describe this, as well as considering related issues that kinship carers may face when attempting to access their benefit entitlement.

Kinship care is defined for the purposes of this report as a main full time care arrangement provided by a member of the child's extended family or wider network of friends. In benefit terms, a carer is a person who provides assistance for a disabled person, child or adult. There are specific criteria for this term to be applied. Thus the report uses the term kinship carer to refer to a member of a child's family or a friend that is responsible for the child.

This report considers:

- a factual, contextual description of benefits and tax credits as they relate to and impact on any household where children and young people up to the age of 18 are resident;
- a set of scenarios that illustrate this and demonstrate the maximum benefit entitlement for kinship carers that accrues from having dependent children and young people in the household;
- an examination of the issues that may prevent households receiving their entitlements;
- an indication of the types of assistance which could enable such households to access the benefits system more easily.

2 Benefits for those with responsibility for children

There are a number of benefits that may be available to those with responsibility for a child. These are:

- Child benefit;
- Child tax credit;
- Disability living allowance (DLA) if a child has a disability;
- Guardian's allowance.

Responsibility for a child may mean that you are able to protect your entitlement to basic State Pension through Home Responsibilities Protection and to build up additional State Pension.

There may also be an impact on other benefits that kinship carers receive. This will depend on the circumstances, including the income, once the children become part of the household.

2.1 Child Benefit

This benefit is administered by the Child Benefit Office of Her Majesty's Revenue and Customs (HMRC). It is paid to those who are responsible for a child or qualifying young person (referred to as a child for the purposes of this report). It is paid irrespective of the income of the claimant.

A claimant is deemed responsible for a child if:

- the child lives with them **or** the person contributes to the cost of supporting the child at a rate of at least the amount of child benefit for that child;

and

- they have priority over other potential claimants – see 2.1.1.

Child benefit is paid at two levels, a higher level for the eldest eligible child and a lower level for each other child.

2.1.1 Responsibility for a child

In order for a child to be considered to be living with a claimant they 'must live in the same house or other residence and also be carrying on there a settled course of daily living'. A child may be absent for 56 days within a 16 week period and still be considered to reside with that person.

Child benefit can only be awarded to one person for a particular child. A claim for child benefit must be made for an award to occur. If more than one eligible

person makes a claim, HMRC will decide who has priority. The claimants would take priority as follows:

- person with whom the child resides;
- a wife (where husband and wife live together and are the parents);
- a parent;
- the mother (where parents are unmarried and live together);
- in any other case, a person agreed by those entitled;
- if there is no agreement, a person selected by a decision maker at HMRC – **there is no appeal against this decision.**

Even if a new claim takes priority over an existing claim, child benefit will continue to be paid to the existing claimant for 3 weeks after the new claim is made. Even if a new claim has priority, child benefit will not usually be paid if it has already been paid for that period to someone else, although there are some exceptions to this rule.

2.1.2 Fostering and adoption allowances

Child benefit is not paid to those who receive an allowance from the local authority towards the cost of the child's accommodation or maintenance, even if they are eligible based on the rules detailed above. The child benefit regulations specifically mention payments made under Section 26 of the Children Scotland Act 1995. There is ambiguity about how other payments may be treated. Section 4.8.1 gives further detail about local authority payments.

2.2 Child tax Credit

Child tax credit is administered by the Tax Credit Office of HMRC. It is a means tested benefit payable to those with responsibility for a child or children, dependent on income.

A maximum child tax credit will be built up for a claimant depending on:

- the number and age of the children;
- any child with disabilities.

This maximum child tax credit will then be compared with the claimant's income, and may be paid:

- **in full;**
- **in part** (on a sliding scale); or
- **not at all** (for higher income claimants).

2.2.1 Responsibility for a child

In order to qualify for child tax credit, the claimant(s) must be responsible for at least one child. To be deemed responsible for a child for child tax credit purposes:

- the child must normally live with the claimant – the ‘normally living with you test’; or
- the claimant must have the main responsibility for the child – the ‘main responsibility test’. This test is used only if a competing claim for child tax credit is made.

In practice, receipt of child benefit will usually mean the claimant is entitled to child tax credit (unless the claimant’s income is too high), but not in every case, as these rules are slightly different. The claimant **can appeal** if a decision maker decides they are not the person responsible for a child.

An initial claim leads to a decision based on the circumstances in the previous tax year. Payment is made based on this decision, and will continue for the entire year. From November 2006, a claimant must inform HMRC if they cease to be responsible for a child, within three months (one month from April 2007), and may incur a penalty of up to £3,000 if they fail to report such a change. An overpayment of tax credit may result which would need to be repaid.

2.2.2 Fostering and adoption allowances and child maintenance payments

If a fostering/adoption allowance is made by a local authority (based on the same rules as for child benefit), then child tax credit will not be paid for that child. If someone is eligible for child tax credit due to responsibility for a different child, then any fostering allowance is not counted as income for tax credits.

Maintenance from an absent parent is also not counted as income.

2.3 Disability living allowance (DLA)

DLA is administered by the Disability and Carers Service (DCS), part of the Department for Work and Pensions (DWP). DLA is paid for a child who has a severe disability which results in personal care needs and/or mobility difficulties. It does not take income into account. A successful claim for DLA for a child will often be for a fixed period, eg two or three years or until the child is aged 16. The benefit is paid to the person with whom the child lives, called an appointee (a gap of up to 12 weeks away from home will not affect payment of the benefit). If the child ceases to live with the appointee, then the

appointee should inform the DWP, who will appoint a new appointee. This will usually be the person that is paid child benefit for that child.

DLA has two components – a care component and a mobility component – and is paid at different rates based on the nature and severity of the disability. In addition to the normal entitlement conditions, children need to prove that they require more assistance than would be usual for a child of their age. Table 2.1 illustrates the figures for 2006–7.

Table 2.1 Rates of DLA for 2006–7 (weekly)		
Rate	Mobility component (£)	Care component (£)
Low	16.50	16.50
Middle	n/a	41.65
High	43.45	62.25

Carer's Allowance may be payable for care of children in receipt of at least the middle rate care component of DLA. This carer would need to comply with the rules for Carer's Allowance, but these do not include responsibility for the child. In theory, Carer's Allowance could be paid to someone other than the primary carer.

2.4 Guardian's allowance

This benefit is administered by the Child Benefit Office of HMRC. It is payable to a person responsible for a child (proved by receipt of child benefit for that child) where both parents have died, or one parent has died and the whereabouts of the other one is unknown. It is £12.50 per week in 2006–7.

2.5 Other benefits and the impact of responsibility for a child

Table 2.2 identifies the possible entitlement to means tested benefits for different groups of people. Their income and circumstances would be taken into account when calculating the amount of benefit they might receive, and in some cases income would be too high to receive any of these benefits. There are other benefits that some adults may receive, but these would be based on their particular circumstances and would not be affected at all by the responsibility for a child.

Table 2.2 Means tested benefits applicable to different groups of people		
People of working age who work less than 16 hours per week	People of working age who work more than 16 hours per week	People over 60
<ul style="list-style-type: none"> • Income support • Income-based jobseeker's allowance (JSA) 	<ul style="list-style-type: none"> • Working tax credit 	<ul style="list-style-type: none"> • Pension credit
<ul style="list-style-type: none"> • Housing benefit to cover rent • Council tax benefit to cover council tax 		

For new claimants of income support, income-based JSA and pension credit, there will be no impact on the amount of benefit payable due to responsibility for a child.

A single person under 60 responsible for a child under 16 would not need to be actively seeking work, so would qualify for income support rather than income-based jobseeker's allowance. However, the amount paid for both benefits to the same person would be the same. (See section 3, case study 1a for more information on actively seeking work.)

There would, however, be an impact on:

- working tax credit;
- housing benefit;
- council tax benefit.

2.6 Working tax credit

Working tax credit is administered by the Tax Credit Office of HMRC. Responsibility for a child can impact on working tax credit in two ways.

Firstly, someone responsible for a child only needs to work for 16 hours per week before they can make a claim for working tax credit. If they have no such responsibility, they would need to work for 30 hours per week before they could make a claim (unless they are disabled).

Secondly, a childcare element can be considered for working tax credit which will partially cover the cost of childcare with a registered childcare provider. It will only be considered for a single person, or a couple where both work or where one is unable to care for the child due to ill health or disability. The childcare element is added to the maximum working tax credit, and then this is

compared with income in order to determine the actual amount of benefit payable. Therefore not all childcare costs are actually covered in all cases.

2.7 Housing benefit and council tax benefit

Housing benefit and council tax benefit are administered by the local authority. When considering the calculation of housing benefit and council tax benefit, the claimant's circumstances are considered. Their 'need' is built up taking into account the people in the household and their specific needs. The addition of children into a household increases this 'need'. If a fostering allowance is paid for a child (based on the same rules as for child benefit), this child would not be considered part of the household and so would not increase the 'need'.

The 'need' is then compared to the claimant's income, and housing benefit and council tax benefit may be paid in full, in part on a sliding scale, or, if the income is too high, not at all. Figure 2.1 illustrates this point.

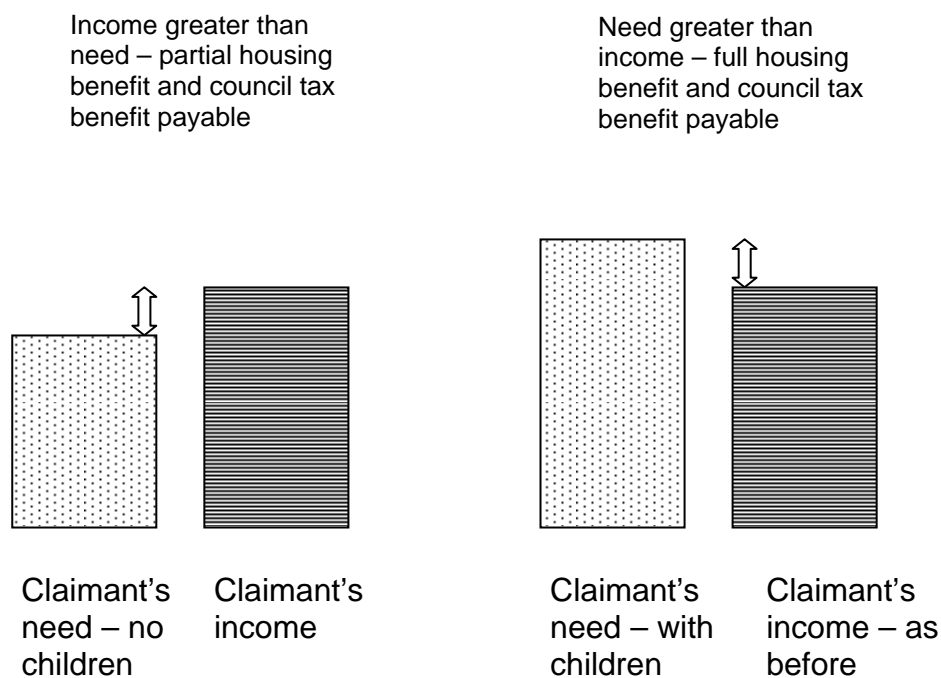


Figure 2.1 Effect of adding children into a household for housing benefit and council tax benefit.

If the claimant's income is too high, the addition of children into the household will still not entitle them to housing benefit or council tax benefit.

2.8 Additional State Pension

Carers are credited into the Additional State Pension Scheme for each complete tax year they do not work at all, or their earnings are low and they are looking after:

- A child under six and get child benefit for that child; or
- An ill or disabled person and are entitled to Carer's Allowance or qualify for Home Responsibilities Protection

This will increase the amount of overall State Pension they can receive and is payable from pension age.

2.9 Home Responsibilities Protection

Home Responsibilities Protection (HRP) was introduced in 1978 to assist people who have caring responsibilities, and are either not in paid employment or have low earnings, to maintain their entitlement to basic State Pension. It also helps protect entitlement to bereavement benefits for the carer's spouse or civil partner and, from April 2002, can in some circumstances qualify a person for additional State Pension.

2.9.1 How HRP works

The amount of basic (Category A) State Pension a person is entitled to depends on the number of qualifying years (that is, years covered by National Insurance contributions paid or treated as paid and credits) they have built up during their working life. In order to receive a full basic pension 9/10ths of the working life needs normally to be covered by qualifying years. The working life is from age 16 to State Pension age and is currently 49 years for men and 44 years for women.

HRP reduces the number of qualifying years needed for a full basic State Pension by taking away the tax years for which it is awarded from the total number of years required. However, it cannot at this time reduce that number below 20. The provisions apply equally to men and women.

The current maximum number of HRP years is 24 for men and 19 for women.

2.9.2 Entitlement conditions

HRP is available for complete tax years throughout which a person has been:

- Awarded Child Benefit for a child under 16; or
- Receiving Income Support and not required to be available for work because of substantial caring responsibilities; or

- Regularly engaged for at least 35 hours a week in caring for someone who receives, for a minimum of 48 weeks in the year, Attendance Allowance, Constant Attendance Allowance or the highest or middle rate of the Disability Living Allowance care component; or
- Covered by a combination of these conditions.
- From April 2003, registered as a foster carer.

HRP is awarded automatically where Child Benefit is in payment or the Income Support provision applies. In any other case an application must be made.

2.10 Passported benefits

The receipt of some benefits can act as a passport to other benefits, eg free school meals, health benefits (free prescriptions, free sight tests and dental check ups) and social fund payments. Claimants who become responsible for a child may then be eligible for the elements of child tax credit or working tax credit that act as such a passport.

2.11 Effect of gaining responsibility for a child

A claimant gaining responsibility for a child may become entitled to some or all of the following benefits:

- child benefit;
- child tax credit;
- working tax credit;
- housing benefit;
- council tax credit;
- passported benefits;
- DLA for the child if the child is disabled (and possibly Carer's Allowance for looking after this disabled child).

This will depend on their income and circumstances. They would continue to receive the benefits they were receiving before as well.

The converse of this is also true, and someone losing the responsibility for a child may lose some or all of those benefits.

2.12 Making a benefit claim and challenging a decision

Table 2.3 summarises possible benefits that a person responsible for a child might be able to claim on taking over the care of a child. It indicates the office

to which they would need to make the claim, whether they are means tested and also the process for challenging the decision.

Table 2.3 Summary of benefits that may be claimed on gaining responsibility for a child			
Name of benefit	Administered by	Means tested, ie dependent on level of income	Challenging the decision
Child benefit	Child benefit office – HMRC	Not means tested	No appeal on who is responsible for a child. Can ask for decision to be revised or superseded.
Child tax credit	Tax credit office - HMRC	Means tested	Can appeal a decision on who is responsible for a child.
DLA if child disabled	Disability and Carers Service	Not means tested	Appeal relates to whether the child's condition fits the criteria for the benefit.
Working tax credit	Tax credit office - HMRC	Means tested	Can appeal some decisions.
Housing benefit and Council tax benefit	Local authority	Means tested	Can appeal, but will use child benefit as proof of responsibility for a child.

3 Case studies

This section considers a number of case studies. They illustrate the impact on benefit entitlement of becoming responsible for a child or children. They include kinship carers with different circumstances.

In the case studies, unless otherwise stated, it can be presumed that:

- the kinship carer has been deemed responsible for the child for benefit purposes;
- the children are not disabled;
- the kinship carers are not disabled;
- the children have no savings or income in their own right;
- the kinship carers have no savings or income other than that indicated.

In all but one of the case studies the kinship carers live in rented accommodation. This is because the situation with mortgage payments is complex; this is dealt with in general terms in section 4.7. Figures for housing benefit and council tax benefit are included in the totals for comparison purposes, although these benefits are usually paid directly to the landlord and the local authority.

These case studies are loosely based on real examples, but additional details have been added to enable the entitlement of means tested benefits to be calculated. The calculations provide approximate figures for benefit entitlement.

Case study 1

Part a)

A 55 year old single woman is unemployed and lives alone. She is in receipt of income-based jobseeker's allowance (JSA). She lives in rented accommodation, and the rent is £50 per week and the council tax (minus the water charge, as this is not covered by council tax benefit) is £20 per week. She was widowed two years ago.

Her six year old grandson comes to live with her. She does not receive any financial support from either the local authority or the child's parents.

Table 3.1 illustrates the benefits she will be entitled to before and after she becomes responsible for her grandson.

Table 3.1 Benefit entitlement for case study 1a)		
Income	Amount before (weekly) (£)	Amount after (weekly) (£)
Income-based JSA	57.45	n/a
Income support	n/a	57.45
Housing benefit	50.00	50.00
Council tax benefit	20.00	20.00
Child benefit	n/a	17.45
Child tax credit	n/a	44.38
Total	127.45	189.28

Her benefit entitlement increases by £61.83 once she becomes responsible for the child.

As the claimant is on income-based JSA before the child comes to live with her, she will receive housing benefit and council tax benefit in full. Once the child moves in with her she will be eligible for child benefit and child tax credit. She will be able to claim income support rather than income-based JSA, as she is a single person responsible for a child under 16.

When claiming income-based JSA a claimant must:

- 'sign on', usually at a JobcentrePlus; and
- be 'actively seeking work'; for example, by
 - attending advisory interviews at the Jobcentre Plus;
 - proving job applications are being made;
 - attending job interviews;
 - registering with agencies.

None of the above is needed when in receipt of income support. However, she will not receive national insurance credits when on income support. She will, however, be eligible for HRP if she is getting Child Benefit for the child. She will need to decide if this is relevant for her and then which benefit to claim.

Part b)

One of the parents of the child starts to make child maintenance payment of £30 per week. Table 3.2 illustrates the impact of this payment.

The child maintenance counts as income for the calculation of income support, with £10 per week disregarded.

Table 3.2 Benefit entitlement for case study 1b)		
Income	Amount with child but no child maintenance (weekly) (£)	Amount with child and with child maintenance (weekly) (£)
Income-based JSA	n/a	n/a
Income support	57.45	37.45
Housing benefit	50.00	50.00
Council tax benefit	20.00	20.00
Child benefit	17.45	17.45
Child tax credit	44.38	44.38
Child maintenance	0.00	30.00
Total	189.28	199.28

Case study 2

A couple, both in their thirties, take on the care of a 4 year old relative. They have no children of their own. The female partner gives up paid employment to care for the child. The male partner works full time and earns the average wage of £23,244 per annum (£447 per week). They are owner occupiers with a mortgage, and they pay council tax of £40 per week (without water charge). They receive no payments from either the local authority or the child's parents.

Before they become responsible for this child, they will not be entitled to any benefits, irrespective of the income of the female partner. Table 3.3 illustrates their benefit entitlement once they are responsible for the child. The male partner's income will stay the same, but they will obviously lose the income of the female partner, as she gives up paid employment.

Table 3.3 Benefit entitlement of couple once they become responsible for a child.	
Name of benefit	Weekly amount payable (£)
Child benefit	17.45
Child tax credit	10.50
Council tax benefit	2.51
Total	30.46

There is no entitlement to working tax credit, as the couple's income is too high. However, the addition of a child to the household means that some council tax benefit is payable, although they will still need to pay £37.49 per week council tax.

They will not receive help with their mortgage, as these housing costs can only be considered if a claimant is entitled to income support or income-based

JSA. This couple are not entitled to these benefits, as the male partner works too many hours.

This couple will lose the earnings of the female partner, and will gain £30.46 per week in benefits if she gives up paid employment to care for the child full time. If she did continue in paid employment, childcare costs would not be covered by working tax credit as their income is too high (whatever she earns).

Case study 3

Part a)

A single pensioner of 68 becomes responsible for her two grandchildren. They are 6 and 8 years old. She is in receipt of state retirement pension, and has an occupational pension of £160 per week. She lives in rented accommodation, and her rent is £52 and her council tax (minus water charge) is £25 per week. She has savings of £15,500. She receives no payments from either the local authority or the children's parents.

Table 3.4 illustrates her income and benefit entitlement before and after she becomes responsible for the children.

Table 3.4 Benefit entitlement for case study 3a)		
Income	Amount before (weekly) (£)	Amount after (weekly) (£)
Occupational pension	160.00	160.00
State retirement pension	84.25	84.25
Housing benefit	0.00	36.48
Council tax benefit	0.00	20.23
Child benefit	n/a	29.15
Child tax credit	n/a	78.26
Total	244.25	408.37

This woman's income will increase by £164.12 per week when she becomes responsible for her two grandchildren. Her own retirement benefits remain the same, but as she now has two children in her household she becomes entitled to both housing benefit and council tax benefit. She also becomes entitled to child benefit and child tax credit.

Case study 4

A couple, both aged 70, become responsible for the two grandchildren of the female partner. They both receive state retirement pension and some guarantee pension credit. They live in a house rented from the local authority,

and pay £55 per week rent and council tax (without water charge) of £28 per week. The children are 12 and 10 years old. They have no occupational pension or savings. They receive no payments from the local authority or the children's parents.

Table 3.5 illustrates the benefits they would receive before and after becoming responsible for the child.

Table 3.5 Benefit entitlement for case study 4		
Name of Benefit	Amount before (weekly) (£)	Amount after (weekly) (£)
Pension credit (savings and guarantee)	25.80	25.80
State retirement pension	168.50	168.50
Housing benefit	55.00	55.00
Council tax benefit	28.00	28.00
Child benefit	n/a	29.15
Child tax credit	n/a	78.26
Total	277.30	384.71

The couple will be £107.41 better off when they become responsible for the children. As this couple were entitled to full housing benefit and council tax benefit in their own right before the children moved in, there is a smaller gain here than in case study 3.

Case study 5

A retired couple aged 69 and 71 become responsible for their two grandchildren, aged 10 and 8. They have savings of £25,000 and an occupational pension of £8,000 and £7,000 per annum respectively, and both receive the state retirement pension. They pay rent of £55 per week, and council tax of £28 per week (without water charge). They receive no payments from the local authority or the children's parents.

Table 3.6 illustrates the benefits they would receive before and after becoming responsible for the children.

Table 3.6 Benefit entitlement for case study 5		
Name of Benefit	Amount before (weekly) (£)	Amount after (weekly) (£)
Pension credit (savings and guarantee)	0.00	0.00
State retirement pension	168.50	168.50
Housing benefit	0.00	0.00
Council tax benefit	0.00	0.00
Child benefit	n/a	29.15
Child tax credit	n/a	12.05
Total	168.50	209.70

This couple will have an increase in income of £41.20 when they become responsible for their two grandchildren. The level of their occupational pensions and savings means that they are not entitled to council tax benefit or housing benefit. It also reduces the amount of child tax credit that they would be paid.

Case studies 3, 4 and 5 illustrate the implications for kinship carers of retirement age, on different levels of income, of taking over responsibility for two children.

The maximum income gain occurs for kinship carers who only receive a small amount of housing and council tax benefits themselves, but have an income low enough that they become eligible for them once there are children in the household. The least income gain occurs for kinship carers with income too high to access means tested benefits even if there are children in the household.

Case study 6

A single female (27) becomes responsible for her niece and nephew, aged 4 and 2. She works part time, 18 hours per week, and earns £108 per week. She lives in rented accommodation and pays £50 per week rent and £20 council tax (without water charge). Table 3.7 illustrates her income:

- before taking over care of the children;
- after taking over care of the children but still working part time (she leaves the children with a relative and does not pay them as she cannot afford childcare);
- after taking over care of the children but having given up her employment.

Table 3.7 Benefit entitlement for case study 6

Income	Amount before(weekly) (£)	Amount after (weekly) when in paid employment (£)	Amount after (weekly) when not in paid employment (£)
Income support	n/a	n/a	57.45
Child tax credit	n/a	78.26	78.26
Working tax credit	n/a	60.58	n/a
Housing benefit	21.92	5.23	50.00
Council tax benefit	11.36	6.23	20.00
Child benefit	n/a	29.15	29.15
Earnings	105.65 (net)	105.65	n/a
Total	138.93	285.10	234.86

If the aunt continues in employment, she will be £146.17 better off once she has responsibility for the children. If she was paying child care to a registered child minder, she would receive more working tax credit, housing benefit and council tax benefit, which would cover most of the childcare costs.

Case study 7

A single woman (58) is unemployed and lives alone in rented accommodation. She pays £55 rent and £23 council tax (without water charge). She becomes responsible for her five year old grandson. The grandson is in receipt of the middle rate care component and lower rate mobility component of DLA. The woman becomes the appointee for the DLA. She fulfils the criteria for receipt of Carer's Allowance as she:

- has earnings of less than £84 per week (level for 2006–7);
- cares for her grandson for in excess of 35 hours per week;
- cares for her grandson who is in receipt of at least the middle rate care component of DLA.

Table 3.8 illustrates her benefit entitlement before and after she becomes responsible for the child. The after situation presumes that she has applied for and been granted Carer's Allowance.

In many cases, the carers of a disabled person will appear to be entitled to Carer's Allowance. However, the receipt of other earnings replacement benefits, such as Retirement Pension or Incapacity Benefit, prevents the payment of Carer's Allowance. The knock on effect on other means tested benefits is also complex. Receipt of Carer's Allowance will mean that the carer

is credited with National Insurance Contributions and will be eligible to be credited into Additional Pension for each full tax year.

Table 3.8 Benefit entitlement for case study 7		
Name of Benefit	Amount before (weekly) (£)	Amount after (weekly) (£)
Income support	n/a	36.85
Income-based job seeker's allowance	57.45	n/a
Child tax credit	n/a	89.46
Housing benefit	55.00	55.00
Council tax benefit	23.00	23.00
Child benefit	n/a	17.45
DLA (for child)	n/a	58.15
Carer's Allowance	n/a	46.95
Total	135.45	326.86

The difference in income level is £191.41.

Payment of child tax credit for a child with a disability is at a higher level than for a child without a disability.

Case study 8

Case study 3 involved the following woman:

A single pensioner of 68 becomes responsible for her two grandchildren. They are 6 and 8 years old. She is in receipt of state retirement pension, and has an occupational pension of £160 per week. She lives in rented accommodation, and her rent is £52 and her council tax (minus water charge) is £25 per week. She has savings of £15,500. She receives no payments from either the local authority or the children's parents.

If she does start to receive fostering allowance of £120 per child from the local authority under the section 26 budget, her entitlement to benefits will change. Table 3.9 compares her position:

- prior to taking responsibility for the children;
- after taking responsibility for the children but with no payments from the local authority;
- after taking responsibility for the children but with the fostering allowance from the local authority.

Case study 3 demonstrated a substantial increase in income for this woman when her grandchildren start to live with her. The impact on her benefit entitlement of receiving fostering allowance will be considerable.

Table 3.9 Benefit entitlement for case study 8			
Income	Amount with no children (weekly) (£)	Amount with children but no maintenance (weekly) (£)	Amount with children and fostering allowance (weekly) (£)
Occupational pension	160.00	160.00	160.00
State retirement pension	84.25	84.25	84.25
Housing benefit	0.00	36.48	0.00
Council tax benefit	0.00	20.23	0.00
Child benefit	n/a	29.15	0.00
Child tax credit	n/a	78.26	0.00
Fostering allowance	n/a	0.00	280.00
Total	244.25	408.37	524.25

This comparison clearly indicates that payment of fostering allowance, even with the resultant loss in benefit, will increase the income of the kinship carer.

These case studies provide an illustration, with actual figures, of the effect of taking responsibility for a child, or children, on the benefits a kinship carer may receive.

4 Potential issues that may impact on kinship carers' benefit claims.

There are a number of reasons why kinship carers may potentially have difficulties with accessing the benefits system when they take over the responsibility for a child. These include:

- understanding the benefits system;
- proving 'responsibility for a child';
- time taken to administer claims;
- need to report all changes of circumstance;
- intermittent care responsibilities or shared care;
- possible impact on the benefit entitlement of the child's parent;
- mortgage payments for owner occupiers;
- complexity of the effect of payments for child maintenance (by the local authority or child's parents) on benefits;
- consideration of options for low income kinship carers;
- income of kinship carer is too high for means tested benefit.

The nature of the transfer of responsibility for a child in these cases can exacerbate the problem. For example, the transfers may be unplanned; they may involve the breakdown of the relationship between the new kinship carer and the parent; and the arrangements may alter on a fairly regular basis.

These issues are explored further below.

4.1 Understanding the benefits system

The benefits system is extremely complex, even when described in brief as in section 2 of this report. There are a large number of criteria for each benefit, to ensure that a claimant is eligible, as well as income rules for means tested benefits. This level of complexity is extremely bewildering, particularly for those with little or no experience of the benefits system. The interaction between benefits is also complex, and requires a considerable knowledge to work out what the most appropriate options may be.

Someone who becomes a kinship carer might possibly become eligible for:

- child benefit;
- child tax credit;
- working tax credit;
- housing benefit;
- council tax benefit;
- carer's allowance for looking after a child receiving the relevant level of DLA.

They would need to become an appointee for the child's DLA if relevant. Case study 7 illustrates the number of benefits that a kinship carer for a child with a disability may be able to claim. It also highlights the increase in income that can result.

Each of these benefits may be administered by a different office (as identified in table 2.3), and may require a different claim to be made. (However, where a child already has entitlement to DLA then no new claim form is needed (because the child is the claimant). The new guardian/carers need to let DCS know that they are now caring for the child and that payment of DLA should be made to them as the new appointee.)

Some claimants may find the process of claiming benefits challenging. CAS find that many claimants have difficulty in completing the forms. They may be required to provide:

- proof of identity;
- proof of income (including savings, earnings, pensions, other benefits);
- proof of responsibility for a child;
- medical details (for disability benefits);
- proof of hours worked.

In most circumstances, a benefit will be paid from the date of the claim. Rules for which benefits can be backdated, and in what circumstances, are also complex, and vary depending on the benefit. Therefore a delay in making a claim can cause a considerable loss in benefit.

The interaction between some benefits also adds to the complexity. For example:

- receipt of disability benefits can increase the level of means tested benefits that is payable;
- only one earnings replacement benefit can be paid to an individual, even if they are eligible for more than one;
- this eligibility, however, can have a knock on effect on some means tested benefits.

4.2 Proving responsibility for a child

As identified in section 2.1, it is necessary to prove that a claimant has responsibility for a child in order to receive child benefit. In general, the default claimant will be the mother of the child. If responsibility for that child is then taken by a kinship carer they will need to prove that they are an eligible claimant, and that they have priority over any other potential claimant. This is only straightforward if all eligible parties agree who has priority. If a decision maker at HMRC has to make a decision, this will require additional proof, and

also will take more time. There is no right of appeal to an independent body once this decision is made.

Once a decision is taken about the person who will receive child benefit, other agencies (apart from child tax credit office) will accept this claimant as being the person responsible for that child. Child tax credit decision makers will not necessarily agree.

In case studies 1 – 7, each claimant / claimants would need to satisfy both offices in HMRC that they were responsible for the child or children.

Child benefit continues to be paid to the original claimant for 3 weeks after a new claim. If payment has already been made to the original claimant, the new claimant, even if entitled to the money, will often not receive it. Therefore any delay in claim, or decision making on who will receive child benefit, can cause a loss in actual payment.

There may be a number of reasons why a kinship carer may not wish to make the claim of priority, not least the impact on the benefit status of the parent – see section 4.6.

4.3 Administrative delays

The processing of even straightforward benefit claim applications can take a varying amount of time, some taking in excess of 6–8 weeks. Therefore even if a kinship carer makes a claim for benefit immediately on taking responsibility for the child, and there are no disputes about this, there will be delays before any money due is paid. Although benefit payment will be backdated to the date of the claim, there is likely to be a period where no actual money is being paid to the kinship carer, which could lead to hardship depending on the circumstances of the kinship carer.

In practice, if the situation is not straightforward, there could be a delay of several months before the benefit payments are made in full.

4.4 Need to report all changes in circumstances

Means tested benefits require that all changes in circumstances must be reported to the relevant office for that benefit immediately. In some cases the absence of a child will remove an entitlement to a benefit (not only child benefit and child tax credit). Overpayments of benefits and tax credits can then follow, which will have to be repaid, with the potential hardship that would ensue. Overpayment of housing benefit or reduction of housing benefit entitlement can result in rent arrears, and in some cases could lead to eviction once the due process has occurred.

This can lead to confusion and considerable hardship for claimants, who may not understand which changes of circumstance need to be reported, and to

which offices. As detailed in 2.2.1, a penalty can also be added to an overpayment by the tax credit office in certain circumstances.

4.5 Intermittent care responsibilities or shared care

If the care of a child is shared between different parties, the situation is even more complex. All the factors discussed above will be exacerbated, as each time the responsibility for the care changes, new benefit claims would need to be made (except in the case of DLA). This will impact on both the kinship carer and the parent. Both will need to maintain a home suitable for the child, but would be faced with losing benefit entitlement each time the child moves away. If the child stays with the kinship carer for less than 56 days within a 16 week period, they would not have an entitlement to child benefit, with the knock on impact for other benefits. For child tax credit, the claim would move from one person to another depending on which person fulfilled the 'main responsibility test'.

4.6 Possible impact on the benefit entitlement of the child's parent

In the same way that responsibility for a child can potentially increase the number and amount of benefits payable to a kinship carer, the loss of that responsibility can cause the parent to lose the same benefits. The examples below show how this may occur:

- a parent on income support losing the responsibility for a child would have to sign on as actively seeking work, and claim income-based jobseeker's allowance instead of income support (unless they qualify for income support through another route). They would no longer be eligible for child benefit and child tax credit;
- a parent on a low income working between 16 and 30 hours per week with no disability would lose not only child benefit and child tax credit but also an entitlement to claim working tax credit. This parent could also lose out on any housing benefit and council tax benefit that they might have been receiving. The parent might also lose the health benefits that would have been passported due to receipt of working and child tax credits.

It is therefore possible that a parent will be unwilling to concede that responsibility for a child has passed to another person. The member of family taking over the responsibility for the child may also be unwilling to force the issue, or indeed claim the benefits to the detriment of the child's parent.

4.7 Mortgages for owner occupiers

Owner occupiers are only able to obtain assistance with their mortgage if they are entitled to:

- income support; or
- income-based JSA; or
- pension credit.

They will only be able to obtain assistance with the interest they pay, and then only using the interest rate specified by the DWP. Interest payments increase the perceived need of the household, but will still be compared with income to calculate if any benefit is payable. Figure 4.1 illustrates this. The diagram presumes that both sets of claimants have identical circumstances apart from their housing status – one couple rent their home whilst the other is an owner occupier with a mortgage.

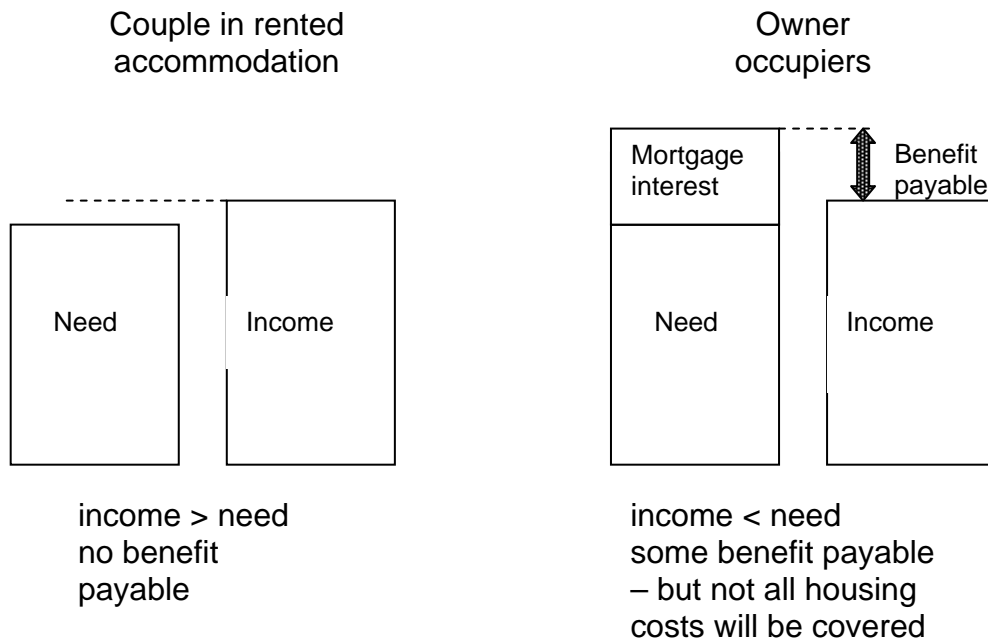


Fig 4.1 Comparison of need with income, including mortgage interest and with no housing costs.

If claimant's income is too high, then there will be no entitlement to benefit whether the need includes mortgage interest or not.

Mortgage interest can only be added into the need for those under 60 after waiting times. This can be as long as 39 weeks before assistance with mortgage payments applies.

4.8 Effects of payment of maintenance for care of a child

A payment of maintenance for the child may be made by the local authority or the absent parent(s).

4.8.1 Fostering allowance made by local authority

The situation with payments made by a local authority is extremely confusing. Payments may be based on three different sections of legislation about the care of children. The following payments may be made:

- payments under section 26 of the Children (Scotland) Act 1995 - for 'looked after' children (this means that the local authority has compulsory care responsibility for the child). Fostering allowances are paid from this budget to approved foster carers. In some cases, kinship carers may be paid fostering allowances.
- payments under section 22 of the Children (Scotland) Act 1995 - enabling the local authority to discharge their duty to provide advice, guidance and assistance in kind or, exceptionally, in cash to a child in need, or the family of that child. These tend not to be regular payments, but one off amounts to cover expenses. However, in some cases they are given on a regular basis.
- payments under section 50 of the Children Act 1975 – authorising the local authority to pay anyone who is looking after a child who is not the parent.

Section 26 payments are specifically mentioned in the child benefit and child tax credit regulations. If a kinship carer has a section 26 payment made to them by the local authority for care and maintenance of a child, they do not count as responsible for that child for benefit purposes. That is, they will not receive child benefit, child tax credit for that child, or consideration of that child when looking at the household for housing benefit and council tax benefit.

However, any income they receive as fostering allowance will not be considered as income when looking at the benefits the kinship carer may be entitled to in their own right. Case study 8 illustrates the effect of a section 26 payment.

If a claimant is in receipt of child benefit for a child, other regular payments to assist with that child's maintenance from the local authority are disregarded as income for tax credits, income support and income-based JSA. They are counted as income for housing benefit and council tax benefit, with £15 disregarded.

There is, however, confusion about how the non section 26 payments are treated for child benefit and child tax credit.

4.8.2 Child maintenance paid by a parent

If child maintenance is received from the absent parent(s), the kinship carer will be able to receive child benefit and child tax credit (if they qualify based on income) for that child. The child will be considered part of the household for housing benefit and council tax benefit purposes. However, the amount of child maintenance paid will be counted as income, with the following disregards:

- for income support or income-based jobseeker's allowance, the first £10 per week is disregarded;
- for housing benefit and council tax benefit, the first £15 is disregarded;
- all child maintenance is disregarded for child and working tax credit, and for pension credit.

Therefore, depending on the circumstances of the kinship carer, they may benefit by only £10 if child maintenance is paid. This is illustrated in case study 1b. If this client had been two years older and in receipt of pension credit instead of income support, the child maintenance would have been disregarded as income, and she would have been £30 better off. A kinship carer who is not in receipt of means tested benefits would keep all of the child maintenance.

4.9 Consideration of options for low income kinship carers

Case study 6 illustrates a potential dilemma for a kinship carer on a low income. This woman works part-time, but once she has responsibility for two children there is only a small financial gain if she continues working.. In order to make an informed decision, she would need advice on her entitlement to benefits, what the choices are and what they mean for her financially. This advice is provided by Citizens Advice Bureaux, some local authorities and some other voluntary agencies, but a kinship carer would need to be aware that these agencies are able to provide such advice.

For kinship carers who work part-time, the number of hours they work is crucial in determining which benefit they can claim. If they do not understand the system, a claim could lapse and there could be a gap between a future claim with a resulting loss of money. There could also be the possibility of an overpayment of the old benefit.

Kinship carers on income-based JSA may also not realise that they could claim income support instead when they become responsible for a child under 16.

4.10 Income of kinship carer is too high for means tested benefits

Some kinship carers will have an income that is too high for them to be entitled to means tested benefits (with the exception of the family element of child tax credit). They will therefore only be entitled to child benefit and £545 per year child tax credit.

Case studies 2 (a couple where the male partner has 'average earnings') and 5 are examples of kinship carers whose income is too high for them to claim means tested benefits.

5 Conclusion

The benefits system provides assistance for those with responsibility for a child or children. With the exception of child benefit and DLA, this general assistance is means tested. It is therefore targeted at lower income households.

In order to navigate the benefits system successfully a kinship carer needs:

- information on their possible benefit entitlement, including
 - what benefits to claim, how to make a claim and to which agency;
 - what to do if their circumstances change;
 - other potential sources of help, to include agencies that will provide advice and information on their entitlement;
- assistance as they take over responsibility for the child, both
 - financial, to help them over the initial weeks until their benefits start to be paid using existing powers in Children (Scotland) Act 1995; and
 - support to prove that they are the person responsible for the child, for child benefit, child tax credit and DLA purposes.

The varying levels of financial support provided by different local authorities from different budgets make it more difficult to calculate how such payments should be treated, and also make the provision of general advice across the country impossible. A consistent approach to kinship care would remove one layer of the confusion.

Specific assistance might be needed where shared or intermittent care is an issue. The benefits system does not lend itself to this situation, given that all changes of circumstances have to be notified and (apart from DLA) fresh claims made each time. Also, depending on the length of time the child spends with the kinship carer, they may be unable to access any benefits for the child.

Administrative delays occur regularly when benefit claims are being made. Reducing the time delay between making a claim and receiving a benefit would decrease the hardship many new claimants may face. This is of particular concern to those kinship carers unable to receive means tested benefits in their own right, but who become eligible when a child becomes part of the household. It would also be helpful if kinship carers could receive some payment whilst waiting for decisions on their benefit entitlement, using the existing powers in the 1995 Act..

Currently guardian's allowance is only paid in very limited cases. If payment of this benefit could be extended to kinship carers where the parents were not dead, this would provide additional support. It might be worth the Scottish Executive discussing with HMRC the possibility of extending the scope of guardian's allowance.

It is unlikely that the benefits system will become less complex, as it has to accommodate a wide range of circumstances. The aim therefore would be to ensure that kinship carers have the knowledge to work within the system; to have as few administrative delays as possible before the correct benefits are paid; and ideally to have interim financial and emotional support in the initial stages when responsibility for a child is transferred to the kinship carer.

6 References

- Aldgate, Jane & McIntosh Miranda, Looking after the Family: A Study of Children Looked after in Kinship Care in Scotland (Sept 2006)
- Child Poverty Action Group, Welfare benefits and tax credits handbook (2006-7)
- HMRC, Child Benefit and Technical Manual
- HMRC, Child Benefit (General) Regulations 2006
- Scottish Executive publication, Children Looked after by Local Authorities: the Legal Framework (2006)
- www.advisernet.com, the CAB information system (December 2006)



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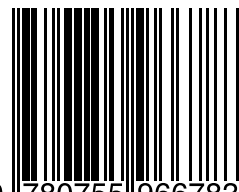
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