



Kinship care and special guardianship

Community Care Live 2021

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Family Rights Group



Family Rights Group

‘Our mission: To create a more socially just society in which the child welfare and family justice systems support children to live safely and thrive within their family, while strengthening the family and community networks of those children who cannot live at home’

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Outline of the session

1 Kinship care – the legal framework

- Different arrangements & their implications
- Exploring kinship care
- Duties to support kinship care

2 Nature of special guardianship

- Origins
- Some features of the special guardianship orders/process (Re P-S and PLWG comments)

3 Special guardianship support

- Overview of the framework for support
- Role of support plans
- Financial support – pitfalls and resources.

Kinship care(rs):

Family members and friends raising children who cannot live with their parents. Sometimes called family and friends carers

Range of reasons leading to kinship care

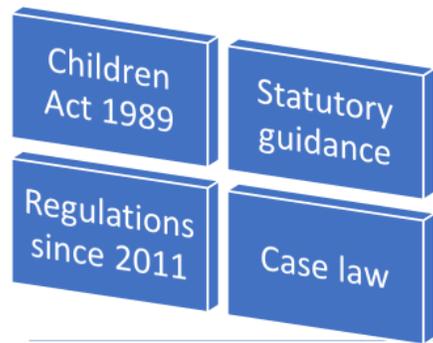
Temporary or permanent



Experience of a kin child

Part one: Kinship care

The legal framework



1 Types of kinship care arrangement

- Different arrangements
- Implications for practical and financial support

2 Exploring kinship care

- The building blocks of the child welfare system
- Overarching duties, partnership working and the role of family groups conferences

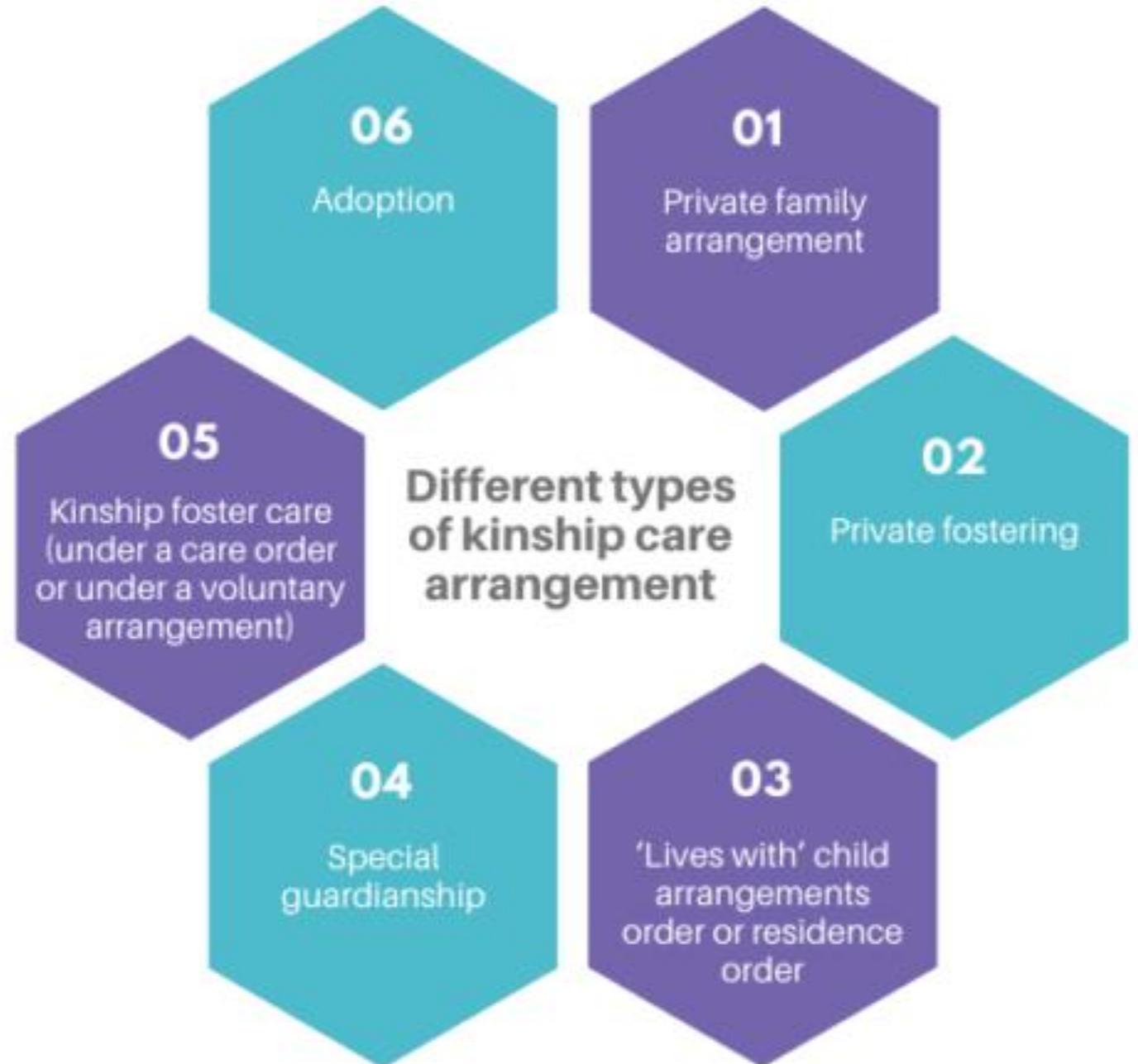
3 Duties to support kinship care

- Overview of the main duties on local authorities to support kinship care in their area.

1. Types of kinship care arrangement

The type of arrangement affects:

- What practical and financial support is available to the carer and child
- The extent of support likely to be provided and
- Who has parental responsibility and can make decisions about the child.



2. Exploring wider family and friends

- Section 17 Children Act 1989 overarching duty
- Looked after children: priority order for placement section 22C Children Act 1989
- Care proceedings: all realistic options for the child
- Clear messages from statutory guidance about partnership, (wider) family and FGCs.





“

A child centred approach means keeping the child in focus....and working in partnership with them and their families

Children are best looked after within their families, with their parents playing a full part in their lives, unless compulsory intervention in family life is necessary.

[Working Together 2018, p9](#)

Exploring potential kinship care options

Resources and reminders

- 1 Initial assessment guide**
 - LA approach to promoting and supporting kinship care
 - Support based on child's need not legal status
 - Evidence based; informed by consultation.
- 2 Role of family group conferencing**
 - More than merely highlighted in statutory guidance (see next slide)
 - And highlighted in Public Law Working Group guidance
- 3 Proceedings - all realistic options**
 - All of the possible realistic options for the child to be cared for within their family and friends network have been explored.
 - Options on the mother's & father's side looked at
 - Court must analyse arguments for & against each realistic option: [Re S \(A Child\) \[2015\] EWCA Civ 325](#)).

Initial Family and Friends Care Assessment: A good practice guide

These assessments are commonly known as viability assessments
Developed by Family Rights Group in partnership with an expert working group



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Family Action
Family Rights Group
Grandparents Plus
Kinship Carers UK
Kinship Care Alliance
London Borough of Islington
Principal Social Work Network
The Fostering Network
The Kinship 'Foster Carers' Group



DELIVERING GOOD PRACTICE INITIAL ASSESSMENTS OF FAMILY AND FRIENDS CARERS IN THE CONTEXT OF COVID-19

An appendix to the Initial Family and Friends Care
Assessment: A good practice guide

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We are also grateful to the additional contributions from an expert advisory group including kinship carers, legal and social work practitioners, academics, children's social care leaders and managers. In particular we would like to thank Kelli Eboji, Katy Halliday, Carolyn Housman, Joan Hunt, VyVy Lewis, Mary Ryan, Enza Smith, Steve Walker and Donna Weaver

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Available at:

<https://frg.org.uk/policy-and-campaigns/>



**Family and friends care
statutory guidance, 2011**

Family Group Conferences (FGCs) should be considered as an effective method of engaging the support of wider family and friends at an early stage of concerns about a child who may not be able to live with their parents...local authorities should ensure that they have arrangements in place to offer a family group conference or other form of family meeting.

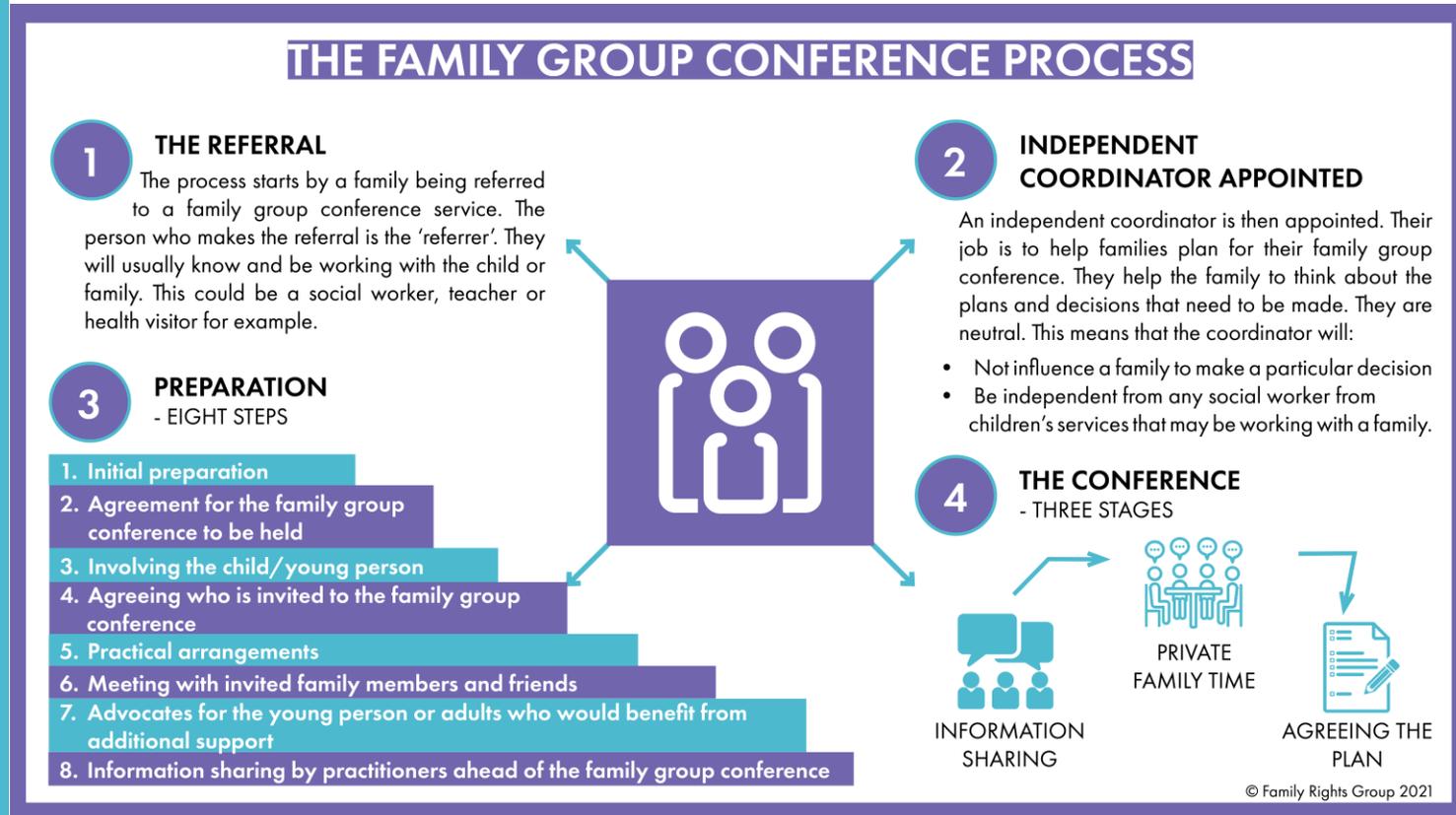


What is a family group conference?

A family-led, decision-making meeting.

Brings together the whole family and others who are important to the child.

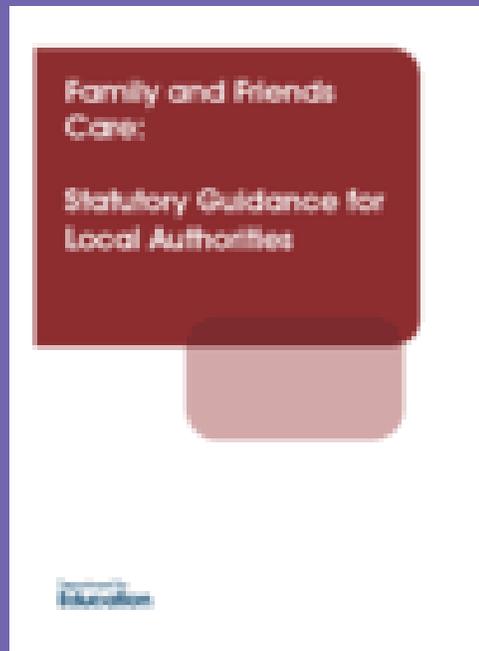
Together, at the family group conference, they make a plan for the child.



For a copy of this infographic and [short films explaining more about FGCs and the FGC process](#) and much more visit our website [here](#). Practitioner resources available [here](#).

3. Duties to support kinship care

Key duties



- 1 A published family & friends care policy**
 - LA approach to promoting and supporting kinship care
 - Support based on child's need not legal status
 - Evidence based; informed by consultation.
- 2 Senior manager with overall responsibility**
 - Policy meets legal requirements & responds to needs
 - Monitor implementation; staff knowledge/training; ensure partner awareness.
- 3 Local policy requirements**
 - Help with accommodation (housing and social care)
 - Help with 'contact'
 - FGCs
 - Kinship care support groups
 - Financial help: one-off and ongoing
 - Advice & information: law, powers and duties of LA.

Experience of a kinship carer



Some messages from case law & LGO

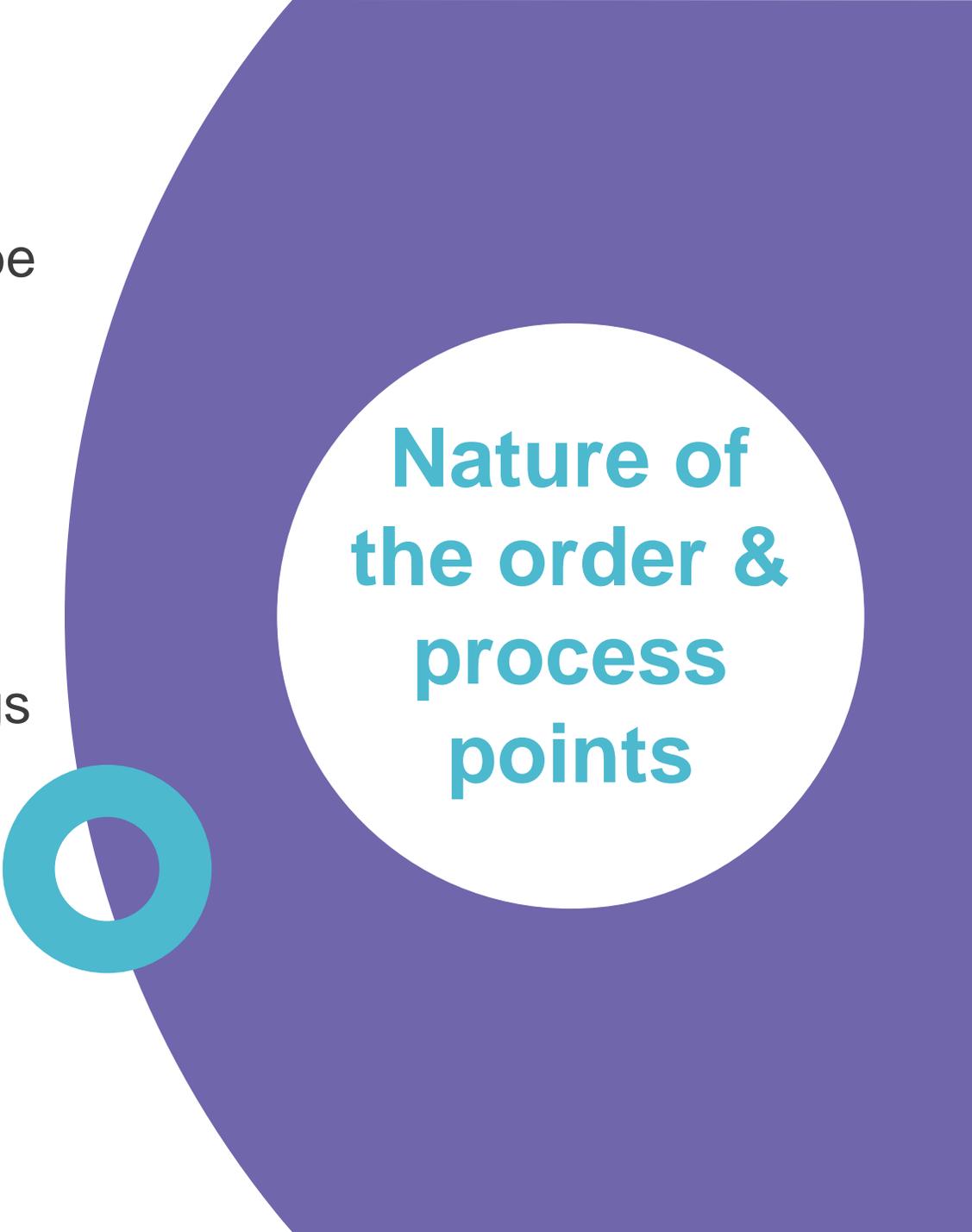
Part 2: Special guardianship

Origins, nature and support
framework



Some key features

- SG: over 18, not a parent, leave may be needed
- Until child is 18 or ended by order
- Provide PR to exclusion of others with exceptions – e.g. change of surname
- Freestanding application, within proceedings
- Or, of court's own motion (see Re P-S however re care proceedings ad PLWG guidance)
- Must be a report
- ¹⁸ Ends a care order automatically.



**Nature of
the order &
process
points**

Kinship care policies in England should:

- Be designed to ensure children living in kinship care receive the support they/their carers need to keep them safe and well
- Have details of the support services that children's services can provide
- Set out the services that are available to kinship carers whatever the type of kinship care arrangement

See [paragraphs 2.12, 4.2 and 4.6 of the Family and friends care statutory guidance for local authorities](#)



**The
context for
SG
support**

Part 3: SG financial support

Legal points, reflections & resources



Children Act
1989

Special
guardianship
regulations

Judicial
review case
law

Ombudsman
decisions &
reports

SG statutory
guidance

F&F Care
statutory
guidance

**Understanding
financial support
for special
guardians**

Pitfalls - *'its in the detail'*

- Not viewing SG financial support in the wider context of kinship support
- Not understanding the status of relevant statutory guidance
- Reading stat. guidance (and gov model/notes) without reference to regulations or applying relevant case law.



Pitfalls - *'its in the detail'*

- Not recognising the link between SG allowance and fostering allowance (this is already legally grounded)
- Applying the government model uncritically and without consideration of recent changes e.g., universal credit
- Lack of literacy about different types of benefits or allowance e.g., those that relate to the carer's needs.



Resources to help

- LGO reports and decisions – ‘Firm Foundations’
- FRG briefing (see opposite)
- Statutory guidance itself
- Accessible case law

‘ Financial support and special guardianship: The legal and practice framework relevant to special guardianship allowance’

Hosted at: <https://frg.org.uk/training-consultancy-and-resources-for-practitioners/kinship-care/>

In the **‘Financial support and special guardianship’ section**. Click the ‘find out more’ button to go to the latest pdf of the briefing. *Last updated September 2021*

Points for reflection

- Are fundamental principles underpinning the Children Act 1989 being reflected in the policy/ approach taken?
- Is the SG financial policy at one with the wider legal framework relevant to kinship care and at one with the LA's own kinship care policy?
- Who leads on this in your LA?
- Are the LGO reports and decisions being used by other LAs to support/audit LA policy/practice regarding SG allowance?





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