

CITY OF WOLVERHAMPTON COUNCIL	Cabinet 18 March 2020
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Report title	Mileage Rate to be Utilised to Reimburse Foster Carers to Transport Eligible Children in Care to School	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor John Reynolds Children and Young People	
Key decision	Yes	
In forward plan	No	
Wards affected	All	
Accountable Director	Emma Bennett, Director of Children's Services	
Originating service	Children and Young People in Care	
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Report to be/has been considered by	Children and Young People Leadership Team	5 March 2020

Recommendation for decision:

The Cabinet is recommended to:

1. Approve the new proposed rate of mileage to be paid to foster carers to reimburse the costs associated with transporting eligible children to and from school.

1.0 Purpose

- 1.1 The purpose of this report is to enable Cabinet to reconsider the rate of mileage paid to foster carers to reimburse the cost of transporting eligible children to and from school.
- 1.2 Cabinet previously considered this matter on 19 November 2019 and agreed to pay foster carers at a rate of 20 pence per mile. This report is recommending that this rate be increased to 45 pence per mile.

2.0 Background

- 2.1 Following recommendations from an investigation completed by the Local Government and Social Care Ombudsman (LGSCO), in November 2019 Cabinet approved a change to practice supporting the need to ensure children in care who are eligible for free school transport, are not financially disadvantaged. (Appendix1).
- 2.2 Section 508B Education Act 1996 provides that local authorities shall secure suitable home to school travel arrangements for the purpose of facilitating a child's attendance at school and that these are made and provided free of charge. A child, without special educational needs, is an eligible child if s/he cannot reasonably be expected to walk to school. A child cannot be expected to walk to school if the route is dangerous or if it is outside walking distance and no suitable arrangements have been made by the local authority for enabling him to become a registered pupil at a qualifying school nearer to his home. "Walking distance" for this purpose is set out in Statutory Guidance Home to School Transport [July 2014] is less than two miles for children aged five to seven and less than three miles where the child is aged eight to 16.
- 2.3 Often a decision is made for children in care to remain in their current school and not move school to a school closer to where the foster home is located. This decision can be made for many reasons, but predominantly this is to ensure stability and continuity for a child and reduce the number of changes required of them, which may cause additional worry and instability.
- 2.4 A former foster carer who was previously approved by the City of Wolverhampton Council (CWC), complained to the LGSCO that the Council was at fault for refusing to fund her transport costs for taking the foster children in her care to school. The view of the LGSCO was that the Council expected her to use the children's fostering allowance to fund this transport leaving her and her foster children financially disadvantaged.
- 2.5 The LGSCO's decision was that the Council was at fault as it had wrongly applied the law relating to school transport arrangements for children in care and the use of fostering allowances. Their view was that children in care should be treated as eligible children where they meet the requirements for financial support with school transport.

- 2.6 The outcome of the LGSCO investigation was published on 16 January 2020 by the LGSCO and notices were subsequently published by the City of Wolverhampton Council (CWC) in the local press.
- 2.7 Changes to policy have been implemented in line with the recommendations made by the LGSCO as previously agreed by Cabinet. The only exception to the recommendations made was that the LGSCO recommended that mileage should be reimbursed at 45 pence per mile, and the rate proposed and agreed by Cabinet was 20 pence per mile.
- 2.8 The rate of 20 pence per mile was based upon the mileage rate that is already utilised for foster carers for other exceptional journeys they undertake over and above what is regarded as part of the daily fostering role, e.g. to cover transport costs for taking children to meet their prospective adopters who may live a significant distance away. This was the recommended option presented to Cabinet as it reflected the rate already being utilised to reimburse foster carers for transport costs.
- 2.9 The LGSCO has now made further contact with CWC to express concern that the rate of mileage utilised will be 20 pence per mile as opposed to the 45 pence per mile they recommended. They have requested a further review and will be undertaking a further investigation if they believe this is required following receipt of the response.

3.0 Progress, options, discussion, etc.

- 3.1 In response to the further contact from the LGSCO the CWC has contacted the other local authorities in the Black Country to benchmark the rate of mileage they utilise to reimburse foster carer mileage. Contact has also been made with Warwickshire who received a similar LGSCO finding in August 2017.
- 3.2 Counsel advice has also been sought in respect of the rate of the proposed mileage.
- 3.3 There are only two options for Cabinet to consider. The first is to reimburse foster carer mileage at the rate agreed at Cabinet in November 2019 at 20 pence per mile .
- 3.4 The second option would be to increase this rate to 45 pence per mile as per the rate recommended by the LGSCO

4.0 Evaluation of alternative options

- 4.1 Based upon the benchmarking exercise and Counsel advice, it is recommended that Cabinet approve option two , to utilise the rate of 45 pence per mile to reimburse foster carers the cost of transporting eligible children in care to and from school.
- 4.2 It is proposed that this rate will be utilised for: any existing placements, all new placements made, for backdated payment to the carer who made the original complaint, and for backdated payments to all other carers affected since August 2017.

5.0 Reasons for decision(s)

5.1 This recommendation is based on:

- Further enquiries with neighbouring authorities and Warwickshire regarding the rate of mileage utilised to reimburse foster carer mileage . The rate of 45 pence would be more in line with the rate paid by other Black County authorities and by Warwickshire.
- The fact that the requests for back pay from foster carers has been far less than originally anticipated .
- The success of the fostering Family Values project now means the number of foster carers approved by the City of Wolverhampton Council who live in the City has increased year on year since 2017. This is the result of a focussed marketing message encouraging citizens of Wolverhampton to become foster carers to care for the children of Wolverhampton. Given more foster carers live in Wolverhampton the distance to children's school is likely to be shorter, with less children in care eligible for school transport.
- Failure to comply with the LGSCO recommended rate of mileage is likely to lead to further investigations by the LGSCO which in turn, depending upon the outcome, could lead to reputational damage and the potential risk of a Judicial Review.

6.0 Financial implications

6.1 The total approved budget for 2019-2020 for fostering allowances is £5.1 million.

6.2 A snapshot of internal foster placements was taken as at 11 August 2019 and this was used as the basis for the calculations.

6.3 The table below shows the financial impact of the rate of 45 pence per mile to reimburse foster carers for the cost of transporting eligible children in care to and from school compared to 20 pence per mile as agreed by Cabinet originally on 19 November 2019:

Description	Financial Impact £000
Foster Carers to be paid an additional element of 20p per mile annual on-going cost	46
Foster Carers to be paid an additional element of 45p per mile annual on-going cost	103
Additional cost	57

6.4 Foster carers have received a letter asking them to notify the fostering team if they believe they are entitled to back pay for school transport for eligible children who have been in their care since August 2017, whether the children are still in their care or not. The claims from foster carers that have come forward totalled £25,000, at the rate of 20p per mile. If the rate of 45p per mile was approved then this would increase to £56,000, an additional cost of £31,000.

- 6.5 The one-off additional back pay costs of £56,000 will be funded from efficiencies made overall within Children's Services during 2019-2020.
- 6.6 The anticipated on-going costs of £103,000 based on the snapshot as at 11 August 2019 will be funded from within the approved budget for 2020-2021 for Children and Young People in Care Service.
[NM/09032020/M]

7.0 Legal implications

- 7.1 As indicated above counsel's advice was sought in relation to the proposed rate of mileage to be paid to foster carers to reimburse the costs associated with transporting eligible children to and from school.
- 7.2 The advice must focus upon the legal consequences of not implementing the LGSCO recommendation.
- 7.3 Whilst the recommendations of the LGSCO are not legally directly binding they can form the basis of judicial assessment of the local authority's actions through applications for judicial review.
- 7.4 If the local authority does not adopt the recommendations – without putting forward a strong legal challenge – the LGSCO will publish its decision and the local authority's response. It is this publicity that is the real force behind the LGSCO.
- 7.5 Such publicity could lead to claims and the costs in time and money that come with those claims. The costs will most likely exceed the budgeted costs of implementing the proposal.
- 7.6 Counsel does not consider there to be any realistic legal challenge to the LGSCO decision in this case – whether directly to the LGSCO or through a case being put in defence of a Judicial Review application.
- 7.7 As a result, a failure to implement the recommendation could lead to judicial review cases being commenced by those who will argue that they are entitled to the backdated payments.
- 7.8 As a non-legal aside the failure to implement the increase may have an impact on the relationships with current and future foster carers.
- 7.9 Counsel therefore advises that WCC adopt the Proposal and increase the mileage rate to 45p for existing and new placements and all backdated payments to August 2017.
[TC/03032020/S]

8.0 Equalities implications

- 8.1 An equalities analysis was completed for the original report presented in November 2019. The LGSCO findings, which have been accepted, show that there is currently an inequality in fostering allowances available to foster carers to care for children in care they have living with them. The current fostering allowance paid to carers in respect of the child they have placed is paid at a set amount according to the child's age. The rates paid by the CWC are based on the Department for Education suggested fostering allowance rates.
- 8.2 The inequality identified by the LGSCO has highlighted that dependent upon the distance a carer has to travel to take the child to school and the cost of this, it leaves children in care with varying amounts of fostering allowance available for the carer to utilise to care for them once travel to and from school costs have been deducted from this amount.
- 8.3 If a child walked to school, there would be no cost incurred and hence the total amount of the fostering allowance would still be available for the carers to utilise in caring for the child.
- 8.4 By providing support with travel costs for the children in care, who are regarded as eligible for free transport, the inequalities are being removed. This ensures no children in care are being financially penalised due to the distance they have to travel to school.

9.0 Climate change and environmental implications

- 9.1 There are climate and environmental implications to this proposal as the children will need to be transported to school where the distance is deemed too long for them to walk. This would be a purposeful decision made to keep a child in care at a school which may be a distance from their foster home. As discussed in this report the decision to keep a child at their original school rather than move them to a school local to their foster carers would always be made having considered the needs of the child.
- 9.2 Carers are encouraged to walk children to school wherever this is possible. This will have the effect of reducing carbon emissions.

10.0 Human resources implications

- 10.1 There are no human resource implications.

11.0 Corporate landlord implications

- 11.1 There are no Corporate Landlord implications

12.0 Health and Wellbeing Implications

- 12.1 Wherever, possible foster carers are encouraged to walk with their foster children to school and encourage children who are old enough to walk or travel independently to school. However, it is acknowledged that in some cases due to location of the school, needs of the child, or that the foster carer will have children at multiple school this may not be feasible.

13.0 Schedule of background papers

13.1 [Financial Support for Foster Carers to Transport Children in Care to School](#) - Cabinet -
19 November 2019.

14.0 Appendices

14.1 Appendix 1: LGSCO Final Report