

# Cabinet Meeting

## 26 April 2017

<b>Report title</b>	Financial Support to Carers of Children Subject to Adoption, Special Guardianship or Child Arrangement Orders	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Val Gibson Children and Young People	
<b>Key decision</b>	Yes	
<b>In forward plan</b>	Yes	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Emma Bennett, Children and Young People	
<b>Originating service</b>	Looked After Children	
<b>Accountable employee(s)</b>	Alison Hinds Tel Email	Head of Service, Looked After Children 01902 553035 Alison.hinds@wolverhampton.gov.uk
<b>Report to be/has been considered by</b>	People Leadership Team Strategic Executive Board	27 February 2017 14 March 2017

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### Recommendation(s) for action or decision:

The Cabinet is recommended to:

1. Approve the updated policy for Financial Support to Carers of Children Subject to Adoption, Special Guardianship or Child Arrangement orders in line with the changes outlined within this report, and approve the implementation on 1 May 2017.
2. Approve the additional indicative cost which is estimated to be in the region of £440,000 per annum for the period the allowance is granted for relating to Adoption, Special Guardianship or Child Arrangement orders.

## **1.0 Purpose**

- 1.1 Local Authorities are required to provide financial support where it is assessed as part of an overall support package for Looked after Children (LAC) who become the subject of Adoption Orders, Special Guardianship Orders, or Child Arrangement Orders (previously known as Residence Orders).
- 1.2 The requirement for local authorities to be responsible for this is underpinned in the following regulations and legislation
  - Children Act 1989
  - Adoption Support Regulations 2005
  - Special Guardianship Support Regulations 2016

## **2.0 Background**

- 2.1 The City of Wolverhampton Council (CWC) currently has an approved policy which details the criteria for financial support to be paid to carers to support permanence orders for LAC.
- 2.2 This policy requires review to ensure that it is not only compliant to changes in regulations but also that it is compliant with recent case law.
- 2.3 The requirement to update this policy has also been prompted by a judicial review application which was received by CWC from grandparents who hold a Residence Order for their grandchildren. The grandparents claimed that they had been treated unfairly as they had only received a residence allowance for the children based on 50% of the fostering allowance paid to carers by CWC. Attention was drawn to case law in similar cases.
- 2.4 There is also a need to ensure that the financial support for permanence orders is in sync with the allowances paid to foster carers under the revised Fees and Allowances Scheme recently approved following review in November 2016.

## **3.0 Progress**

- 3.1 A bespoke project scope was completed by Rebecca Godar from Policy Intelligence on behalf of CWC.
- 3.2 The project scope was to provide analysis of Wolverhampton's current Special Guardianship and Adoption Allowance policy, and to provide recommendations for a new policy including:
  - a review of regulations and guidance
  - a review of case law
  - a benchmarking exercise with similar and nearby authorities.

The key questions for the review were:

- In what circumstances should CWC pay financial support to permanent carers?
- What amount should CWC pay in financial support to permanent carers?
- How long must CWC continue to provide financial to permanent carers for?

3.3 An initial project report was completed and following discussion with the Head of Looked after Children a proposed draft policy was produced incorporating information collated as part of the project.

3.4 The attached proposed draft policy is compliant with current regulations and guidance and has been checked against recent case law. It has been reviewed and amended following advice from Counsel.

3.5 The policy sets out the arrangements for assessment and provision of financial support to permanent carers of LAC who subsequently become the subject of an Adoption, Special Guardianship, or Child Arrangements Order.

#### 4.0 Proposal

4.1 The key proposed changes are as follows: (For the purpose of this report permanent carers are defined as carers who care for previous LAC who are now subject to an Adoption, Special Guardianship, or Child Arrangements Order)

Proposal	Current
Financial support payments to all permanent carers are to be based on the core fostering allowance which is related to the child's age. The amount of the allowance paid is based on the Department for Education Minimum Fostering Allowances. The amount of this allowance is a reflection of the child's allowance currently paid to foster carers approved by CWC. All core allowances will be means tested.	Currently for approved foster carers who become adopters or special guardians the child's fostering allowance is reduced to reflect benefit entitlement for the child, it is not means tested
The core fostering allowance will be the maximum amount that all permanent carers can receive.	Currently for carers who have not received an allowance before, the maximum allowance paid is based only on a maximum of 50% of the core fostering allowance for the child.
As part of transitional arrangements for foster carers already caring for the child, the payment of their fostering fee will continue for two years, but may be continued after that point at the local authority's discretion.	This is in line with the current policy
The same criteria and level of financial support will be applied whether the foster	Currently foster carers who are approved by independent fostering agencies, the

<b>Proposal</b>	<b>Current</b>
<p>carer is a local authority mainstream foster carer, a carer provided through an Independent Fostering Agency, or if the carer is an approved family and friend carer.</p>	<p>allowance is based on the fee they receive as carers rather on the City of Wolverhampton rate for foster carers.</p>
<p>Core allowances will be paid until the child is 18 if the child remains living with the carer and in education.</p>	<p>This is currently paid up until 21 if the young person remains in education.</p>
<p>For children and young people who are subject to Special Guardianship or Child Arrangement Orders, at 18 they will be able to access Leaving Care services as a qualifying young person. In addition they will be able to request the same support in accessing Higher Education as a Care Leaver.</p>	<p>This is not currently available as the carer would continue to receive the financial support in these circumstances post 18 and would be expected to support the young person financially.</p>
<p>Financial support to carers will cease if a young person between 16 and 18 becomes financially independent, either through being in paid employment, or if they are eligible for benefits in their own right.</p>	<p>Currently allowances would continue to be paid to the carers in the above two scenarios until the young person reaches 18.</p>
<p>Financial support is dependent on the carer's financial circumstances. An annual review of the carer's financial circumstances will be undertaken to ensure that the carer is still eligible to receive financial support and at what level this should be. If the outcome of this annual review is that carers are no longer eligible as a result of the means test application, the allowance will cease.</p>	<p>Annual reviews do currently take place but the new process will ensure there are systems in place for this to be implemented consistently.</p>
<p>Annually, carers will be sent a request for completion of a financial statement and supporting evidence will need to be provided in order that a new means test can be undertaken. Failure to return the financial statement with supporting evidence within 28 days will result in the termination of financial support payments.</p>	<p>Although annual reviews currently take place the proposed process will ensure that this is managed systematically in a timely way.</p>
<p>All permanent carers in receipt of financial support will be required to sign a financial support agreement.</p>	<p>Currently carers sign the agreement to financial support as part of a Special Guardianship or Adoption support plan. The agreement to receipt of financial support is not a stand-alone document.</p>

<b>Proposal</b>	<b>Current</b>
Any proposal for discretionary payment will be presented to resource panel for consideration and approval.	This is currently approved by Head of Service

## **5.0 The Means Test;**

- 5.1 The means test to be applied for eligibility for financial support can be determined by the local authority as long as it is clear in the policy what the means test calculation is and how it is to be applied.
- 5.2 A number of options for a means test were considered, including continuing to utilise the existing model but utilising 100% of the core allowance for all requests for assessment, a simplified calculation of entitlement which would have meant a potential increase to the total expenditure.
- 5.3 The proposed model detailed in section six is deemed to be the most suitable model. A test case sample of existing allowances have been recalculated utilising this model to ensure its potential effectiveness and efficiency.

## **6.0 Proposed assessment for calculating financial support**

- 6.1 Applications for financial support would be treated in two ways:
1. If the applicant is receiving a means-tested benefit the recommended Age-related allowance minus Child Benefit is payable.
  2. If the applicant is **not** receiving a means-tested benefit, then means-test as follows:
    - No financial support for those with capital of £16,000 or more. Use tariff income rules for capital over £6,000 (£1 for every £250 more than £6,000 as per Income Support rules);
    - No financial support for those with annual income over the Relevant Income Threshold (RIT). The RIT is based on Universal Credit rates with a buffer at the Standard Allowance amount which reflects average earnings (see below);
    - 100% of the Age-related Allowance used in all cases and for applicant's who are former foster carers, the Fostering Fee is added for two years from date of Order (to provide transitional protection for former foster carers);
    - Allow a 25% disregard on applicant's (and their partner's) monthly income and use just the basic national Income Support applicable amount (i.e. removing the 25% buffer used under the current system);

- If there is no disposable income available, Child Benefit and Child Tax Credit payable for that child is deducted from 100% of the recommended Age-related Allowance to arrive at the amount of financial support due;
- If there is a disposal income available, use 100% of the disposable income to determine the amount of financial support due.

This model provides specific targeted financial support to applicants however, full assessments will be required every 12 months and all relevant income and capital details will be required from all applicants (including supporting evidence).

Calculation of Relevant Income Threshold (RIT) April 2017:

**Income =**

- All non-means-tested benefits except Disability Living Allowance (DLA), Personal Independence Payment (PIP), Attendance Allowance (AA)
- Net Earnings (Gross earnings minus Tax, National Insurance and Pension Contributions)
- Other income e.g. rental income

Relevant Income Threshold is based on Universal Credit Allowances and Elements

(April 2017 rates):

<b>Allowance</b>	<b>Monthly Amount £</b>	<b>Annual Amount £</b>
Couple	498.89	5,986.68
First child	277.08	3,324.96
Second and each subsequent child	231.67	2,780.04
<b>Total RIT</b>	<b>X 2</b>	<b>£24,183.36</b>
<b>Additional Elements (where applicable)</b>		<b>Total RIT</b>
Plus Disabled Child	372.30	<b>£28,650.96</b>
Plus Disabled Child & Carer	524.19	<b>£30,473.64</b>
Plus Disabled Child & Carer & Limited Capability	842.95	<b>£34,298.76</b>
Plus Carer	151.89	<b>£26,006.04</b>
Plus Carer & Limited Capability	470.65	<b>£29,831.16</b>
Plus Limited Capability	318.76	<b>£28,008.48</b>
Plus Limited Capability & Disabled Child	691.06	<b>£32,476.08</b>

## 7.0 Financial implications

7.1 The total approved budget for permanency allowances for 2017-18 is £2.4 million.

- 7.2 Achieving adoptions and other permanent orders such as Child Arrangement Orders and Special Guardianship Orders are a significant way of enabling children to cease being looked after and secure their long term care within a permanent family. As such, a robust plan and focus on ensuring, where appropriate, permanency for looked after children has been a key element in reducing our Looked After Children.
- 7.3 In order to compare the impact of the proposed permanency allowances a typical week was extracted from the payments system Carefirst. The data from the specific week in question showed that a total of 288 payments were made in relation to the above allowances. A random sample was then selected in order to use for the comparison. The allowances used for the comparison were after discounting any discretionary paid allowances as this was considered to be a representative sample of the total allowances.
- 7.4 The costs associated with the implementation of the new policy are “in accordance with the fundamental underlying aim of the Children Act and other legislative provisions; to promote the welfare of children”. On this basis, any carer that currently receives a child's allowance of 50% would be eligible to have that allowance increased to 100%. From the sample referred to in paragraph 7.3 this currently equates to 165 carers. It is difficult to quantify the additional individual cost of the proposed uplift as the allowance is subject to a means test. The worst case scenario has been calculated on the basis that everyone will receive the 100% allowance that currently receives the 50% allowance.
- 7.5 In the short term there will be an additional indicative cost in the region of £440,000 per annum for the period the allowance is granted for. It should be noted that the provision for the above increased cost is not accounted for in the £2.4 million budget quoted in para 7.1.
- 7.6 In the longer term due to the changes in the proposed policy and the implementation of a more rigorous means test it is anticipated that that the £440,000 quoted in paragraph 7.5 will be contained within the approved budget.
- 7.7 If the proposed policy is not implemented then the Council could be subject to legal challenge as carer's should be receiving 100% of the child's allowance. This could have a much higher potential cost than that quoted in the above paragraph 7.4 as associated legal costs would be incurred.
- 7.8 Existing carers that currently receive a higher discretionary allowance that was agreed as per an order will continue to receive this amount as it is higher than the 100% child's allowance that is referred to in the above paragraph.
- 7.9 Any new carers approved going forward that receive an allowance under the new proposed policy will only receive the allowance for a period of two years unless a discretionary allowance is granted. Where this is the case, an allowance would only be paid until the child turns 18 and not the current age of 21 years.
- 7.10 Should a child that was previously subject to a Special Guardianship Order or a Child Arrangement Order (formerly Residence Order) go on to attend university, then an

additional allowance would be payable from the age of 18 until 21 years. Based on the current Financial Help for Care leavers at University policy, this would be up to a maximum of £500 per month towards accommodation costs along with reimbursement for travel costs to and from university each term. It is not possible to quantify the costs associated with this at this stage as it is not known how many children will go onto attend university.  
[NM/09032017/Q]

## **8.0 Legal implications**

The relevant legislation is set out in the body of the report. In addition the principles from the applicable case law has been considered and applied in drafting the policy. Counsel's advice has been sought in relation to the drafting of the policy and its implementation. In terms of the implementation of the policy the focus needs to be upon ensuring that the implementation is "in accordance with the fundamental underlying aim of the Children Act and other legislative provisions; to promote the welfare of children"

Advice has been sought from counsel who advises that in order to avoid the risk of challenge the new policy will need to be applied to all carers who are currently in receipt of 50% of the current fostering allowance under the old scheme/policy. Each carer will either need to be written to individually and advised about the new policy and that they are entitled to a re-assessment under the new policy if they choose, and that if they are assessed to be worse of they will remain in receipt of their current allowance but that the following will apply:-

- a) No reduction will take place for a period of time (say two years) in order for them to adjust
- b) There will be a reduction but it will be staggered over a period to allow for transition
- c) There will be no reduction, but also no future increase until such time as the 'core allowance' as set by the DfE has caught up and natural increases take place thereafter.

It is for the local authority to decide which of the above options they will consider however, counsel suggests that option c would be the safest option in terms of minimising the risk of challenge.

Carers who are in receipt of an allowance that was agreed as part of care proceedings will have to remain in receipt of their current allowance as there is a risk of challenge by way of breach of contract.  
[TC/07032017/T]

## **9.0 Equalities implications**

Equality impact assessment has been completed

## **10.0 Environmental implications**

10.1 There are no environmental implications.



**11.0 Human resources implications**

11.1 There are no human resource implications

**12.0 Corporate landlord implications**

12.1 There are no corporate landlord implications

**13.0 Schedule of background papers**

13.1 Minutes from Pre-Scrutiny Panel on 29<sup>th</sup> March 2017 (Appendix 1)