

APPENDIX 4

Report of the Strategic Director of Children's Services to the Meeting of the Children's Services Overview and Scrutiny Committee to be held on 31 January 2017

AG

Subject:

Fostering Allowances Review

Summary statement:

Attached is the response to reasons cited for the call in of the decision of the Executive Committee, 10 January 2017, relating to Agenda Item 7, Fostering Allowances Review

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Portfolio:

Health & Wellbeing

Overview & Scrutiny Area:

Children's Services

1. Fostering Allowances Review

- 1.2 In accordance with Paragraph 8.6.2 (Part 3E of the Constitution) the decision of the Executive held on Tuesday 10 January 2017 regarding Fostering Allowances Review (**Executive Document "AS"**) has been called-in.
- 1.3 Councillor Arshad Hussain (Chair of the Corporate O&S) has called-in the decision, as requested to do so by a Member of the Corporate O & S Committee, Councillor Cooke. The Call-in relates to the following resolution and the reasons for the call in are set out below:

2. FOSTERING ALLOWANCES REVIEW

Resolved –

That Option 2 – Reducing Fostering allowances to the Government minimum allowances over a two year period with effect from 01 April 2017 be approved.

ACTION: Strategic Director Children's Services

Overview and Scrutiny Area: Children's Services

(Jim Hopkinson - 01274 432904)

3. The reason for Cllr Cooke requesting the call-in are:

- It is acknowledged by the council that Foster Carers already possess a strong sense of being undervalued, though the report provides members with no indication or projection of the potential impact that the implementation of the Executive's decision, may have upon the Council's Sufficiency Duty in relation to looked after children.
- Whilst the report makes reference to legal requirements relating to payments made to the carers of Looked After Children and the actions of the Courts, in to date rejecting local authority justifications for differences in allowances paid to the different types of carers, the information provided regarding the legal requirements is not sufficient for members to ascertain whether the Council's circumstances are comparable and thus whether any legal obligations are likely to be breached.

Councillor Simon Cooke

4. In response to the potential impact on the Council's Sufficiency Duty:

- 4.1 The Sufficiency Duty places a duty on the local authority to provide/commission enough of the right placements at the right time for the children in need of accommodation in its area. The Council's Sufficiency Duty

will continue to be met by a combination of internal and external placements in accordance with the child's needs and care plan. Traditionally, foster carers in Bradford have been very loyal to the Council and we very much value and appreciate everything they do in welcoming looked after children into their homes and caring for them as part of their families. However, the proposal to change the fostering allowance rate may result in some foster carers leaving Bradford Council to transfer to other fostering providers. Supervising Social Workers and Team Managers report a mixed response to the proposal with a small but significant number of foster carers advising that they intend to transfer to another agency. Should we lose foster carers as a result of the proposed change to payments, we will need to recruit further foster carers. Recruitment activity is ongoing in Bradford and we currently have 23 applicants in the assessment process with monthly Information Evenings booked in for the year. However, 35% of the 652 children who were looked after in foster care at the end of quarter two 2016 were placed in Family & Friends placements. There has been a consistent upward trend in family and friends placements which is expected to continue as social workers must consider placing children with family as the first option if they are being removed from the care of their birth parents.

- 4.2 Foster carers are very much valued and consideration is also given to support foster carers in looking after the children placed with them. In the summer, meetings were held with over 100 foster carers in Bradford and Keighley to discuss service developments. Foster carers gave positive feedback about the impact of the Family Finding Team which matches children in need of placements with foster families who have vacant placements, after previously complaining that the system of managing vacancies was unfair. They also welcomed news of the development of a Model of Care and the bid for innovation funding to introduce the Mockingbird Family Model in Bradford to support them in the fostering task. The Fostering Service will also be prioritising developing a support package for disabled children as announced to foster carers in the newsletter from the Service in December, and work is in progress to build on the support groups in place.
- 4.3 Children's Services have commissioned a Strategic Director, independent from Children's Services, to undertake a review of our fostering services to include our requirement to recruit and support foster carers.

5. With reference to the legal requirements:

- 5.1 Statutory guidance in relation to Special Guardianship (2016 and previously 2005) states that 'in determining the amount of any ongoing financial support, the local authority should have regard to the amount of fostering allowance which would be payable if the child were fostered.' This paragraph has been the subject of judicial scrutiny in a number of cases, notably: -
- 5.2 **Barrett v Kirklees MC (2010)**. This case held the local authority's special guardianship allowance rate which was set at two thirds of its fostering allowance, was unlawful. The local authority acknowledged that the allowance was not in accordance with the statutory guidance and therefore had to be

justified on rational grounds. It argued that there were additional costs in bringing up a foster child arising on account of the characteristics of fostered children and of fostering and also that the SGO allowance was a gateway allowance, opening the door to other state benefits. Neither argument was accepted by the judge who pointed out that "some children who are placed with special guardians are in situations which have derived from former fostering arrangements... and the cost of bringing up these children may not be significantly less than the cost of bringing up fostered children." It was emphasized in the case that the more substantial the departure from the guidance, the more convincing the reason for departing from it needs to be.

- 5.3 **R (TT) v London Borough of Merton (2012).** The local authority had set its SGO allowance at two thirds of the national minimum fostering allowance, justifying it in their policy by stating the child had become part of the family unit and the additional costs for a looked after child were therefore not applicable to a child in a special guardianship arrangement. The court held that where a local authority proposes to have a policy in which the allowance to be paid to special guardians is set, it must, in order to comply with the Guidance, consider the Fostering Network's minimum recommended allowances and make such adjustments to those allowances to reflect the (lower) costs to a special guardian as it considers appropriate. He accepted that any such adjustment would inevitably be somewhat arbitrary but that was what he considered the Guidance required. Compliance was not achieved by ignoring the additional costs of caring for a child not born into the family or assessing them as nil. It was therefore his view that the local authority did not comply with the Guidance and had produced no reasons, cogent or otherwise, for not doing so.
- 5.4 The legal position is also affected by the Statutory Guidance for Local Authorities regarding Family and Friends Care (2010). This applies to all circumstances where children are being cared for by friends or family, whatever the legal status of the arrangement. The Guidance states that local authority 'policies should be underpinned by the principle that support should be based on the needs of the child rather than their legal status'.