APPENDIX 5

Submission on behalf of GMB Members to Children's Services Overview and Scrutiny Committee

30 January 2017

This is a further submission on behalf of GMB members in response to the Report of the Strategic Director of Children's Services and subsequent consultation for consideration at the Meeting of the Children's Services Overview and Scrutiny Committee, 31 January 2017.

In response to the authority's legal justification for the proposed cost cutting exercise, we refer to a recent quote from Nigel Priestley, the solicitor who brought the case against Kirklees upon which the Authority seeks to rely.

> *"Nigel Priestley, the solicitor who brought the case against Kirklees in 2010, said that Bradford aligning its rates now "simply doesn't make sense… This isn't a sudden legal emergency but a calculated decision [based on cost-cutting]""*
>
> (Quote from Community Care News 12th January 2017)

Turning to the cases cited in the report (sections are quoted directly and highlighted in blue to make it easier to follow);

> "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"

Bradford has set its SGO allowance at 100% of the National Minimum Fostering Allowance, so this case cannot be cited as a hypothetical case against Bradford as a suitable comparator, as the material fact here is the setting of the rate at <u>two thirds of the national minimum.</u>

This case also contains a very relevant section in the judgement, which further defeats the Authority's reliance on the case as a justification for the proposed cost cutting exercise.

> "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 <u>make such adjustments</u> to those <u>allowances to reflect the (lower) costs to a special guardian</u> as it considers appropriate."

It is very clear from this judgement that <u>the discretion to make adjustments</u> and pay <u>lower</u> as detailed in the statutory guidance for local authorities on the Special Guardianship Regulations 2005 (as amended by the Special Guardianship (Amendment) Regulations 2016) February 2016, <u>remains unchallenged</u>.

> "Barrett v Kirklees Council (2010); this case held the local authority's special guardianship allowance rate which was set at two thirds of its fostering allowance, was unlawful. It was emphasised in the case that the more substantial the departure from the guidance, the more convincing the reason for departing from it needs to be."

Once again, the SGO allowance rate had been set at two thirds of the fostering allowance. This is not the case in Bradford. It does not state that you cannot depart, but the more substantial departure the more convincing the reason must be. Bradford barely departs from the National Minimum allowance at all:

Age	Private	Friends	Difference	Percentage
0-4	£127.47	£126.00	-£1.47	1%
5-10	£145.21	£139.00	-£6.21	4%
11-15	£180.76	£159.00	-£21.76	12%

Bradford does not make a substantial departure between the two and even the most extreme is nowhere near "two thirds". The small difference would bring a significant risk factor with any legal challenge and is not viable on cost grounds, as such a high degree of discretion is contained within the statutory guidance and case law, with any monetary gain being only slight.

For this reason, there are no cases, either in Bradford or elsewhere.

The recent case in Bradford, as reported in the Telegraph and Argus, which settled out of court, was not brought to align allowance rates; it was brought as the carers were being underpaid by a massive £260 per week because they were not being correctly remunerated for taking in "a sibling group of three". As the children were described as "young", if it was merely to align rates, the maximum underpayment would be £18.63 per week not £260 per week so it is clearly not a justification for the current cost cutting proposals.

Section 5.4 of the report states:

> "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'."

Friends and family carers are covered by Family and Friends Care Statutory Guidance for Local Authorities 2010, which clearly states in section 7:

"7. The local authority has discretion to give financial assistance (which can be on the basis of regular payments) but there is no entitlement and family income may be taken into account since the local authority must have regard to the means of the child and parents under section 17 (8) the 1989 Act)"

Turning next to the reports response to the Authority's Sufficiency Duty, it states that carers have already indicated that they plan to leave, although many are holding off announcing their intention pending the decision of the Scrutiny Committee. The Authority appears unable to provide the Committee with accurate figures. The report also appears to be completely unconcerned with the fact that carers have already told their Supervising Social Workers that they will leave and merely makes suggestions about how the gap may be filled. Not in the immediate future, but at some future hypothetical date, if they can recruit enough carers and find suitable friends and family placements, neither of which are guaranteed.

Carers already report that they are all too familiar with the, "if you don't like it leave" attitude, which many have said they feel is evident in the sentiment of the report.

Neither does the report appear to address the cost implications of losing carers. A conservative estimate based on 20 carers with 30 children between them, and 7 complex placements would easily see and increased cost to the Authority of £1,144,000, wiping out the £450,000 attempted saving and resulting in a net loss of £694,000. Carers are entitled by law (Children's Act) to transfer to an agency with the children in their care remaining with them. Agencies have confirmed that they will take legal action against Bradford Council, if they try to circumvent the law. Bradford Council will be paying at least three times as much for exactly the same carers, with the same children in placement.

It is also important to note that a number of carers have said that they will leave the profession altogether, which is incredibly unsettling and upsetting for any child losing their stability as a result of Bradford winning "the race to the bottom". Many of Bradford's carers are already paid much less than Leeds and Calderdale, evidence supporting this claim, based on individual circumstances and cases, has been presented to Councillors Hinchcliffe, Cooke, and Smith.