



Haringey Council

Report for:	Corporate Parenting Advisory Committee	Item Number:	
Title:	Family and Friends Carers Policy		
Report Authorised by:	Marion Wheeler/ Libby Blake		
Lead Officer:	Paul McCarthy		
Ward(s) affected: ALL	Report for Key/Non Key Decisions:		

1. Describe the issue under consideration

Haringey is required to have a 'Family and Friends Policy' according to Statutory Guidance published in March 2011, consideration has also been given to the court of Appeal Judgement in the Tower Hamlet case (X v LB of Tower Hamlets [2013] EWCA Civ 904).

2. Cabinet Member introduction

This policy meets the legal requirements and describes the Local Authority's responsibility toward people who may be caring for children of friends and family members.

3. Recommendations

CPAC to consider and ratify the policy

4. Other options considered

5. Background information



The policy brings together the Local Authority's responsibilities according to a range of legislation and regulation. It is required to be a public document. The policy provides background to the rationale about fostering allowances for family and friends carers.

6. Comments of the Chief Finance Officer and financial implications

Expenditure on Family and Friends is contained within the base budget of the Commissioning and Placements service.

Carers need to be signposted so that they are aware of their entitlement to state benefits (such as child benefit and child tax credit) and how to apply for any discretionary financial support that may be available. When financial support is offered a written agreement should be drawn up detailing the level and duration of the support, and the mechanism for review. Carers should be aware of eligibility criteria and means testing (if applicable) when financial assistance is given on a one off or a regular basis.

Following the Tower Hamlets Appeal Court judgement the budget has been reviewed and if all current kinship foster carers were brought up to the equivalent of task centred fostering allowance this would add £500k a year to placement costs. However a higher allowance equivalent is paid only when the kinship foster carer has successfully completed Skills to Foster / Preparation for Fostering training and committed to participate in all subsequent mandatory training. Some carers may not wish to participate in this training and for those that do complete there will be a gradual movement of carers to the higher allowance. On this basis the service manager is highlighting a budget risk of a maximum of £100k in this financial year. The full financial implication for future years is not clear at this stage.

7. Head of Legal Services and legal implications

- 7.1 The Head of Legal Services has been consulted about this Report.
- 7.2 The Committee is asked to consider and approve the draft Family and Friends Carers Policy which sets out the Council's policy in respect of looked after children who placed with Family and Friends foster carers. The statutory basis for this arrangement is contained in Part III of the Children Act 1989 (as amended) headed *Local Authority Support for Children and Families* and supporting statutory guidance. The following provisions are of particular relevance.
- 7.3 Section 17 of the 1989 Act imposes a general duty on the local authority to safeguard and promote the welfare of children within their area who are in need; and so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs ("family support services"). "Family" in relation to such a child, includes any person who has parental responsibility for the child and any other



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person with whom he has been living. The range and level of support services which may be provided is very wide.

- 7.4 Section 20 of the Act provides that the local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of: (a) there being no person who has parental responsibility for him; (b) his being lost or having been abandoned; or (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care. The local authority may also provide accommodation for any child (even though a person who has parental responsibility for the child is able provide them with accommodation) if they consider that to do so would safeguard or promote the child's welfare.
- 7.5 Where a child is provided with accommodation by the local authority (under Section 20 above), or the child is subject to a care order, the child is a looked after child by the local authority. The Act sets out the ways looked after children are to be accommodated and maintained by the local authority.
- 7.6 Section 22C provides that the local authority must make arrangements for a child who is looked after to live with their parents, a person who is not a parent but who has parental responsibility for the child. This "rehabilitative" duty (as described in statutory guidance) is subject to the proviso that the arrangement must be consistent with the child's welfare or reasonable practicable. If not, the local authority must place the child in the most appropriate placement available. 'Placement' means and options include: (a) placement with an individual who is a relative, friend or other person connected with the child and who is also a local authority foster parent; (b) placement with a local authority foster parent who does not fall within (a) above; (c) placement in a registered children's home.
- 7.7 In determining the most appropriate placement for the child, the local authority must "give preference to" a placement with a person who is a relative, friend or other person connected with the child and who is also a local authority foster parent. If reasonable practicable depending on the circumstances of the child's case, the local authority must also ensure that the placement is such that: (a) it allows the child to live near the family home; (b) it does not disrupt the child's education or training; (c) if the child has a sibling for whom the local authority are also providing accommodation, it enables the child and the sibling to live together; (d) if the child is disabled, the accommodation provided is suitable to the child's particular needs. Also, if reasonably practicable, the placement must be such that the child is provided with accommodation within the local authority's area.
- 7.8 The local authority may determine the terms on which they place the child with a local authority foster parent (including terms as to payment) but subject to any order made by the Secretary of State.
- 7.9 Section 22G of the Act places the local authority under a duty to secure, so far as reasonably practicable, sufficient accommodation for looked after children which is



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within the local authority area and meets the needs of children. This is often referred to as the sufficiency duty.

- 7.10 By section 7 of the Local Authority Social Services Act 1970, all Local Authorities are obliged, in the exercise of their social services functions, including the exercise of any discretion conferred by any relevant enactment, to act under the general guidance of the Secretary of State. Section 7A of that Act further provides that, without prejudice to section 7, “every local authority shall exercise their social services functions in accordance with such directions as may be given to them under this section by the Secretary of State”. In this respect, the *Fostering Services: National Minimum Standards*; *The Children Act 1989 Guidance and Regulations volume 4: Fostering Services*; and *Family and Friends Care: Statutory Guidance for Local Authorities* are relevant.
- 7.11 The *Fostering Services: National Minimum Standards* Standard 13 with respect to achieving the sufficiency duty provides “The fostering service recruits, assesses and supports a range of foster carers to meet the needs of children they provide care for and is pro-active in assessing current and future needs of children.” Standard 13.1 then states: “The local authority fostering service implements an effective strategy to ensure sufficient foster carers to be responsive to current and predicted future demands on the service.”
- 7.12 Standard 28 is specifically concerned with payment to foster carers. Its intended outcome is that: “Payments to foster carers are fair and paid in a timely way.” Standard 28.1 then provides: “Each foster carer receives at least the national minimum allowance for the child, plus any necessary agreed expenses for the care, education and reasonable leisure interests of the child, including insurance, holidays, birthdays, school trips, religious festivals etc, which cover the full costs of caring for each child placed with her/him.” Standard 28.5 adds: “There is a clear and transparent written policy on payments to foster carers that sets out the criteria for calculating payments and distinguishes between the allowance paid and any fee paid. ...” Standard 28.7 states: “Criteria for calculating fees and allowances are applied equally to all foster carers, whether the foster carer is related to the child or unrelated, or the placement is short or long term.”
- 7.13 Standard 30 is concerned with family and friends as foster carers. The intended outcome is stated in these terms: “Family and friends foster carers receive the support they require to meet the needs of children placed with them.” Standard 30.10 provides: “Financial and other support is provided to all foster carers according to objective criteria that do not discriminate against foster carers that have a pre-existing relationship with the child. Family and friends foster carers may require some services to be delivered in a different way, but there should be equity of provision and entitlement.”
- 7.14 *The Children Act 1989 Guidance and Regulations volume 4: Fostering Services* Chapter 5 is headed *Approving and Supporting Foster Carers*. Paragraph 5.71 states: “It is essential that all foster carers are given clear information about criteria for making financial payments to them, including allowances, fees and other



expenses. Allowances must be sufficient to cover the full cost of caring for each child placed with them, and must be reviewed annually. The Government has put in place a National Minimum Fostering Allowance ... which is the very minimum which should be provided to a foster carer for each child placed. Criteria for calculating allowances must apply equally to all foster carers, whether or not they are related to the child or the placement is long or short term (Standard 28).”

- 7.15 Paragraph 5.73 provides: “Fees are in addition to allowances and may be paid by fostering services to reflect the expertise and the nature of the tasks undertaken by a range of foster carers. Where fees are paid by a fostering service these must be payable to those on their register of foster carers who meet the criteria set out for the scheme, including short and long term carers and family and friends carers.”
- 7.16 The *Family and Friends Care: Statutory Guidance for Local Authorities* Paragraph 4.2 requires each local authority with responsibility for children services to publish a policy setting out its approach towards promoting and supporting the needs of children living with family and friends carers. Paragraph 4.3 states that, whilst the detail of the policy is a matter for local determination within the length and extent of legislation and statutory guidance, it must address the matters outlined in the rest of the document. Paragraph 4.48 refers to the National Minimum Standards for fostering services and continues: “Fostering services must deliver services in a way which ensures that family and friends foster carers are fully supported to care for children placed with them and are not disadvantaged as a result of their prior relationship with the child.” Paragraph 4.49 states “Fostering allowances to foster carers must be sufficient to meet the cost to the carer of caring for the child and should be at least the minimum set annually by the Department of Education. The allowances paid by a fostering service must be calculated for family and friends foster carers on the same basis as for all other foster carers, and any variations should relate to the child’s needs, the skills of the carer or some other relevant factor that is used as a criterion for all of the service’s foster carers. Paragraph 4.50 states: “A judicial review of Manchester City Council’s policy on payments of allowances to family and friends foster carers in 2001 ... came about because foster carers who were relatives of the children they were caring for were paid significantly less allowance than non-relative carers. The Court held it was unlawful to discriminate against family and friends carers by paying them a lower allowance than non-relative foster carers. There is no requirement to pay a fee to reward a carer’s time, skills, commitment, etc in addition to the allowance. Where a fee is paid, it must be payable to those foster carers who meet the criteria set out for the scheme, including foster carers who are family and friends.”
- 7.17 In *R (on the application of X) v Tower Hamlets London Borough Council* [2013] the High Court and Court of Appeal recently considered whether the authority’s policy on the payment of fees (and/or allowances) to foster carers were unlawful/irrational in so far as they provided for different payments to be made to family foster carers on the one hand and unrelated foster carers on the other. Consideration was given to the statutory provisions and guidance mentioned above.



- 7.18 The Court found that the statutory scheme left it to local authorities to determine the terms, including the terms relating to payment of allowances and fees, on which they would provide fostering services. Nevertheless, their freedom to determine their own policies was not unconstrained. There were two relevant constraints. First, the legislation showed a clear intention by Parliament that children who could not continue to live with their parents should, if possible, be placed with family members who were able and willing to qualify as local authority foster carers in preference to unrelated carers. It followed that a local authority policy which would frustrate that intention was likely to be unlawful. The second constraint was the requirement to comply with the statutory guidance unless there were cogent reasons for not doing so.
- 7.19 The statutory guidance reflected two principles: (i) the welfare principle; and (ii) that there should be equality of treatment as between family and unrelated foster carers. The statutory guidance directed local authorities to comply with both of those principles. Moreover, the second principle of equal treatment applied notwithstanding recognition of the existence of differences between the two kinds of carers. The statutory guidance required that family foster carers were fully supported to care for children placed with them and not disadvantaged as a result of their prior relationship, further, it was not acceptable to discriminate against foster carers on the basis that they had a pre-existing connection with the child. The principle of equal treatment applied also to fees as well as to allowances. Fees need not be paid to foster carers, but if they were paid, they had to be payable to foster carers who met the applicable criteria regardless of whether they were related to the children. The payment of differential fees and/or allowances on the basis that the task of family foster carers and the expectations on them were different from those applicable to unrelated foster carers was contrary to the principle of equal treatment on which the statutory guidance insisted in full knowledge of the differences inherent in the respective roles of the two groups concerned and therefore, unlawful.
- 7.18 The draft Family and Friends Carers Policy in addition to setting out the Council's approach towards promoting and supporting the needs of children living with family and friends foster carers, is also intended to ensure that there is equal treatment in the payments (whether allowances, fees or otherwise) made to Family and Friends foster carers and Tasked Centred/Long Term foster carers.

8. Equalities and Community Cohesion Comments

The policy described in this report will support the Council's corporate objective "Enabling all Haringey children and young people to thrive". By virtue of the characteristic of age, children and young people are protected by section 4 of the Equality Act and are therefore owed the public sector equality duty to have due regard to their welfare when making a decision. This policy will help the Council discharge this duty in respect of Haringey's children and young.



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9. Head of Procurement Comments

10. Policy Implication

11. Use of Appendices

Policy attached.

12. Local Government (Access to Information) Act 1985