

Meeting:	Cabinet
Meeting date:	Thursday 17 December 2020
Title of report:	Review of fostering allowances and fees for foster carers
Report by:	Cabinet member children and families

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose

This report is seeking approval for an increase in allowances and fees for foster carers approved by Herefordshire Council.

Recommendation(s)

That:

- (a) **Fostering fees and allowances are increased to the amounts detailed in Appendix A from 1st January 2021;**
- (b) **The Director of Children and Families is given delegated authority to approve annual increases in fostering fees in consultation with the Cabinet Member for Children and Families and the section 151 Officer;**
- (c) **The fostering fees and allowances policy is approved and implemented from 1st January 2021 (Appendix B); and**
- (d) **Council approved foster carers receive a 50% exemption to their Council tax from 1st April 2021.**

Alternative options

1. Do nothing. A comprehensive review of current fostering fees and allowances has been completed comparing the Council's level of payment with those of neighbouring and regional authorities. This has highlighted that the Council pays lower fees and allowances than these authorities which is likely to impact on our ability to recruit and retain foster carers.
2. Increase fees and allowances at a lower level than proposed. Fostering services operate in a competitive market place. The service needs to improve recruitment and retention of foster carers to meet needs of children and young people in care. Allowances and fees need to be equal to or better than our local competitors if possible.
3. Increase fees and allowances at a higher level than proposed. Any short term advantage of paying higher than competitors is likely to be very short-lived as the market would adjust and ultimately drive up the cost of foster placements locally. It is therefore proposed that the Council approve allowances and fees that are comparable with other authorities and our competitors and that the focus continues to be on providing a quality service that attracts and retains foster carers alongside the package of financial support offered.

Key considerations

4. The Children Act 1989 requires the local authority to secure sufficient suitable accommodation to meet the needs of children and young people in care. The current Looked After Children & Complex Needs Accommodation Commissioning & Sufficiency Strategy was approved by Cabinet in March 2019 and set a target to increase the number of approved foster carers so that 90% of children in general and specialist foster care placements are living with in-house foster carers. At the end of September 2020 67% of children and young people in care were living with in-house foster carers.
5. Foster carers are paid two distinct elements to meet the needs of children. The first of these is a maintenance allowance to cover the day to day costs of caring for a child or young person. Under Regulation 28.1 of the National Minimum Standards for Fostering 2011 there is a requirement that;

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 cost of caring for each child placed with her/him.

6. The Department for Education (DfE) sets out the national minimum allowance each year and the allowances are banded depending upon the age of the child. The regulations and guidance are ambiguous about whether this minimum allowance is inclusive of payments for birthdays, holidays and religious festivals. Herefordshire council has taken the approach of including these payments within the minimum allowances and so practically these are deducted from the fortnightly allowance and paid at the relevant time to each foster carer. The review of allowances paid by neighbouring authorities has highlighted that all other local authorities pay birthday, holiday and religious festival allowances in addition to the DfE national minimum allowance. Consequently the Council's rate of payment is the lowest of those included in the review for age groups 0-10 and mid-table for allowances for children aged 11+.
7. It is recommended that maintenance allowances are increased to the average of our neighbouring local authorities or current allowance is maintained (whichever is higher) and that the clothing grant, which is currently paid separately, is included within the weekly allowance. Herefordshire council has previously chosen to pay higher than the DfE minimum allowances for older children and therefore by choosing to pay the average of neighbouring authorities the proposed increase is higher for younger children than for older children. This would result in Herefordshire paying the 3rd highest rate for 0-4 years, 4th highest rate for 5-10 years and 5th highest rate for 11-17 year age groups out of six neighbouring and regional local authorities that have been reviewed within the benchmarking exercise.

Age range	Current weekly payment	Proposed weekly payment	Proposed weekly increase
0-4years	£123.85	£154.15	£30.30
5-10 years	£138.75	£168.46	£29.71
11-15 years	£195.92	£199.06	£3.14
16+	£234.46	£234.46	£0.00

8. The second element paid to foster carers is a fostering fee which is a taxable reward payment to foster carers in recognition of the work they carry out for the Authority. There is no requirement or national minimum amount for this payment but it is standard practice within local authorities. Herefordshire fostering service, similarly to others, has different fee levels with the highest fee level paid to foster carers who are able to demonstrate the ability to meet the needs of children and young people with more complex needs and who provide additional support to the fostering service for example by supporting recruitment activity, training and buddying other foster carers.
9. When compared with other local fostering services Herefordshire pays slightly more than others to Level 1 carers but much less to Level 2 and Level 3 carers who make up the majority of our approved foster carers.

10. It is recommended that the maintenance allowance is increased to the average of our neighbouring local authorities or current fee is maintained (whichever is higher) and that the authority to approve an annual increase in fostering fees is delegated to the Director of Children’s services to reflect rises in inflation and to ensure that Herefordshire’s fees remain competitive. It is recommended that the Director consults with the Cabinet Member for Children and Families prior to making this decision.

Fee Level	Current weekly payment	Proposed weekly payment	Proposed weekly increase
Level 0 (Pre foundation training)	£0.00	£0.00	£0.00
Level 1	£100.00	£100.00	£0.00
Level 2	£125.00	£164.30	£39.30
Level 3	£175.00	£223.00	£48.00

11. The Fostering service has specific payments and allowances that are paid to foster carers who provide respite or specialist placements such as parent and baby placements, children with complex disabilities or who are considered alternative to residential placements. These have all been reviewed and a number of changes are proposed to simplify the payments policy and in particular to ensure that the package of allowances provided to respite foster carers fully meets the costs to carers of meeting this service need. These are set out in the policy attached at Appendix B.
12. The Fostering service’ main competitors are within the independent sector where fostering agencies are run by businesses and in some cases the third sector. The service does routinely place children and young people with independent fostering agencies when it is unable to match an in-house foster carer with the child’s needs. The service needs to utilise every advantage to distinguish itself from the independent sector. One way of doing this financially is to offer council tax discounts to foster carers approved by the local authority which offers a significant financial benefit that is not something the independent sector is in a position to offer.

Community impact

13. The County plan has an ambition to “strengthen communities to ensure everyone lives well and safely together” and this includes a specific ambition to support children and young people in care to be well supported. The provision of local foster carers well supported by the council’s fostering service will contribute to children in care growing up with the stability and support they need to succeed as adults, who for the most part, will continue to live within local Herefordshire communities.
14. The County plan also aims to “Spend public money in the local economy wherever possible”. In-house foster carers almost all live within the County and will spend their household income within the County. Foster carers approved by independent fostering agencies don’t all live within the County and most companies are making profits that the local community does not receive any benefit from.
15. These proposals contribute to the council’s ability to achieve its ambitions in key strategies in the children and young people’s plan and placement sufficiency strategy.

16. The Corporate Parenting strategy includes priorities of increasing the number of foster carers so that children and young people can remain living in their local community close to family, friends, school and their social activities.

Environmental Impact

17. If children are placed with independent fostering agencies or in residential units because of the insufficient availability of in-house foster placements these are more likely to be out of county and in some cases a large distance away. This requires social workers, other related professionals as well as families to travel to see the child and young person increasing travel requirements and the impact on the environment. Increasing the provision of local foster carers would reduce this impact.

Equality duty

18. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
19. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. The fostering service welcomes applications from all sectors of the community and is ambitious in seeking placements for children whatever their level of need. The fostering service needs to increase the diversity of approved foster carers as there are not sufficient carers from Black and Minority Ethnic groups to match with children and young people in care. There is a particular gap in relation to foster carers from a Gypsy, Roma and Traveller background. The service is focussing upon increasing the number of children and young people placed with kinship foster carers so that children and young people are able to live with those from the same background as themselves. A more attractive financial support package will support the ambition to increase the diversity of approved foster carers.
 20. All foster carers complete mandatory diversity training to ensure that they have an understanding of the importance of understanding the impact of discrimination and what they can do to ensure the needs of children and young people are understood and met. It is important that all children and young people are supported to develop a positive sense of identity.

Resource implications

21. These proposals will enable the service to provide a competitive financial package of support to prospective and existing foster carers which alongside other measures to

enhance the success of recruitment and to provide good quality support will increase the ability of the service to recruit and retain foster carers.

22. The average cost of an in-house foster placement is £17,153 compared with £39,420 for an independent fostering agency placement per annum. Assuming that the numbers of looked after children remain the same if the service achieved its target of providing in-house placements to 90% of children in foster care then the estimated spend would reduce from £5.5 million to £4 million per annum avoiding costs of £1.5 million per annum.

23. This would further increase if fewer children were placed in residential care. At the end of September 2020 there were 23 children placed in residential care because no suitable foster placement could be found. The average cost of a residential placement is £228k per annum.

24. Projected additional costs include an annual inflationary uplift of 2%.

Revenue or Capital cost of project (indicate R or C)	2020/21	2021/22	2022/23	Future Years	Total
Increase in fostering allowances – increased incrementally at least in line with DfE minimum allowance	£43,042	£175,566	£175,666	£175,766	£570,040
Increase in fostering fees – reviewed and increased in line with inflation each financial year	£65,436	£266,943	£267,043	£267,143	£866,565
Increase to allowances for respite foster carers	£5,750	£23,400	£23,450	£23,500	£76,100
50% rate of exemption to Council tax for all approved foster carers	£0	£87,198	£87,298	£87,398	£261,894
TOTAL	£114,228	£553,107	£553,457	£553,807	£1,774,599

Legal implications

25. The Local Authority is required by law to pay its foster carers the National Minimum Fostering Allowances.

26. Payment of the National Minimum Fostering Allowances ensures the Local Authority's compliance with Section 49, Children Act 2004. Whilst the Local Authority has a duty to maintain a child apart from the provision of accommodation (s22B Children Act 1989), and legally has to pay the National Minimum Fostering Allowances, it has discretion as to the way in which it pays for the specific and additional living costs of fostered children.

27. In determining the appropriate fostering allowances Department of Education sets National Minimum rates for these allowances each financial year.
The National Minimum Standards (NMS), Standard 28, set out that:-
“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 cost of caring for each child placed with her/him.”
28. The NMS for fostering services are issued by the Secretary of State under section 23 of the Care Standards Act 2000. The Secretary of State will keep the standards under review and may publish amended standards as appropriate.
29. The standards apply to fostering services (including local authority fostering services). Where a standard places an expectation on a foster carer, this should be interpreted as an expectation on their fostering service (local authority) to support the foster carer to meet the standard.
30. The underpinning legislation for NMS standard 28 – payment to carers are The Fostering Regulations (England) 2011:-
- Reg 17 Support, information and training for foster parents;
 - Reg 27 Approval of foster parents; and
 - Schedule 5 - Matters and obligations in Foster Care Agreements
31. NMS standard 28 also sets out:-
- 28.3 - Allowances and any fees paid are reviewed annually and the fostering service consults with foster carers in advance of any change to the allowance and fee.
 - 28.5 - 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. The policy includes policy on payment of allowances and any fee during a break in placement or should the fostering household be subject to an allegation.
 - 28.6 - The written policy and the current level of payments are provided annually to each foster carer and commissioners of the service. The foster carer receives clear information about the allowances and expenses payable, and how to access them, before a child is placed.
 - 28.7 - 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.
32. This is a key decision because it is likely to be significant having regard to the strategic nature of the decision and the financial impact upon the service.
33. The relevant power and specific statutory duty to pay foster carers derives from the National Minimum Standards (NMS) 2011, Standard 28.1, the NMS 2011 were issued pursuant to s23 of The Care Standards Act 2000.
34. Under section 13A(1)(c) of the Local Government Finance Act 1992 the Council is permitted to operate a discretionary council tax discount scheme in addition to the mandatory council tax reduction scheme for those in financial need. The discretionary scheme can reduce the amount of council tax to be paid to nil; and can apply to particular cases or class of cases. A discount for in-house foster carers is permitted under this provision and is entirely lawful.

Risk management

Risk / opportunity	Mitigation
Despite an increase in allowances there is not an increase in foster carers recruitment or retention and spend on independent fostering agencies and residential placements does not reduce.	The increase in financial support proposals are one element of the service's recruitment and retention approach which includes adding marketing specialisms and improving the training and support provided to foster carers
There have been a number of cases considering whether foster carers are either workers or employees. As a result of a Scottish case involving Glasgow City Council foster carers working as 'multi treatment foster carers' have successfully challenged their status as employees of the council as a result of the contractual agreement they entered into with the local authority and the degree of control the authority exercised over their day to day work. There is a risk that litigation by foster carers in England might also be brought.	The current prevailing view in English law is that foster carers are not workers or employees as they do not have a contract with the local authority; their relationship is governed exclusively by a statutory framework. Cases are very much fact specific. Legal advice should be sought before any contractual agreement is entered into with foster carers and the council including if any grievance or threatened litigation is raised challenging the employment status of foster carers.

Consultees

35. The recommendations within the review have taken into account the views of foster carers shared through their annual reviews and meetings with the foster carers representatives group.
36. Political groups have been consulted. One question clarifying the budget implications was received and responded to.

Appendices

Appendix A – New foster carer rates 2021

Appendix B – Fostering Fees and Allowances policy

Background papers

None

Please include a glossary of terms, abbreviations and acronyms used in this report.