



Meeting of East Renfrewshire Health and Social Care Partnership	Integration Joint Board
Held on	17 February 2016
Agenda Item	6
Title	Kinship Care and Residence Orders- Financial and Policy Implications
<p>Summary</p> <p>This report advises the members of the Integration Joint Board of the impact of the national agreement between COSLA, Scottish Government and Social Work Scotland and the European Human Rights Commission concerning parity of allowances for Kinship Carers with Foster Carers. The report also outlines the financial implications and the policy implementation for looked after children and young people in East Renfrewshire.</p>	
Presented by	Kate Rocks, Head of Children & Families and Criminal Justice (CSWO)
<p>Action Required</p> <p>The Integration Joint Board is asked to:-</p> <ul style="list-style-type: none"> • Note the contents of the report • Note Scottish Government & COSLA recommendations to Local Authorities about Kinship Care and Residence Orders • Note impact of legislative & policy change for HSCP and East Renfrewshire Council. • Note projected financial commitment in respect of Kinship Care and Residence Orders 	
<p>Implications checklist – check box if applicable and include detail in report</p> <p> <input checked="" type="checkbox"/> Financial <input checked="" type="checkbox"/> Policy <input checked="" type="checkbox"/> Legal <input checked="" type="checkbox"/> Equalities <input type="checkbox"/> Efficient Government <input type="checkbox"/> Staffing <input type="checkbox"/> Property <input type="checkbox"/> IT </p>	

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EAST RENFREWSHIRE INTEGRATION JOINT BOARD**17 FEBRUARY 2016****Report by Chief Officer****KINSHIP CARE AND RESIDENCE ORDERS- FINANCIAL AND POLICY IMPLICATIONS****PURPOSE OF REPORT**

1. This report advises the members of the Integration Joint Board of the impact of the national agreement between COSLA, Scottish Government and Social Work Scotland and the European Human Rights Commission concerning parity of allowances for Kinship Carers with Foster Carers. The report also outlines the financial implications and the policy implementation for looked after children and young people in East Renfrewshire.

RECOMMENDATION

2. The Integration Joint Board is asked to:-
 - Note the contents of the report
 - Note Scottish Government & COSLA recommendations to Local Authorities about Kinship Care and Residence Orders
 - Note impact of legislative and policy change for HSCP and East Renfrewshire Council
 - Note projected financial commitment in respect of Kinship Care and Residence Orders

BACKGROUND

3. Scotland has a long history of kinship care which reflects a complex relationship between the role of the state and private family life. Growing recognition that kinship care should be considered as 'first option' is in the best interests of the child is reflected in national policy. Kinship is fundamental to delivering GIRFEC and is supported by the following policy documents Kinship & Foster Care (Scottish Government, 2007) Looking after the Family (Algate & McIntosh, 2006) Children (Scot) Act, 1995 & Looked after Children Regulations: Part V & V III (2009).
4. The implementation of the Children and Young People (Sc) Act 2014, as it relates to kinship care, introduced the notion of **formal** and **informal** kinship care.
5. Where the local authority, delegated to HSCP, has placed children within formal kinship arrangements made the placement, are considered looked after and are subject to the appropriate statutory legislation. Consequently, arrangements must be both assessed and managed in compliance with the LAAC Regulations. Kinship should be considered as a permanency option where children are unable to return safely to birth parents and will be supported within our local planning arrangements.
6. Informal kinship carer arrangements are where either families or friends have assumed the care of children without the involvement of the local authority and not at the request of the local authority. There is no statutory requirement on the local authority to financially support these informal care arrangements.

7. In August 2014, COSLA and Scottish Government was initially approached by the European Human Rights Commission with regard to human rights concerns about some councils paying lower allowances to children in kinship care compared with foster care. East Renfrewshire was one of eleven local authorities where the EHRC threatened judicial review by means of class action due to the disparity between kinship and fostering allowances.
8. The EHRC were steadfast of the view that the majority of councils, including East Renfrewshire Council do not have parity between kinship and foster care allowances and as a consequence were in breach of the European Convention articles that relate to privacy and discrimination respectively. The risk to the whole of local government was considered high if individual councils were indeed found to be in breach of the law, as the consequences of any judgement would apply to all local authorities.
9. COSLA working closely with SWS and Scottish Government officials developed a potential option for councils to consider. As a result of discussion with officers the current model used by Inverclyde Council has been identified as the best and most practical option. This option involves the council paying kinship carers the same allowance as paid locally to foster carers, but subtracting eligible benefits. This is referred to as the Local Parity model for simplicity in this report.

Delivering local parity between foster and kinship care and residence allowances

10. The Local Parity model achieves parity in payment levels for kinship and foster care allowances by paying kinship care allowances locally that are the equivalent to foster care allowances minus benefits i.e. child benefit and tax credits. These kinship care allowances are paid under Section 22 of the Children Scotland Act 1995 on the basis that these allowances will be to meet the child's social, emotional, educational and recreational needs and are reviewed annually.
11. The advantage of this approach is that it continues to factor in benefit entitlement which can be taken into account when delivering parity. It also ensures that allowances for all children in foster and kinship care are treated the same no matter their circumstances. For kinship carers who are eligible for benefits it reduces the risk of them losing their entitlement to gateway benefits such as housing benefit, free school meals etc.
12. The EHRC indicated to COSLA and Scottish Government early in 2015 of their support of councils adopting this type of model as this would resolve many of their concerns.

Financial costs associated with the Local Parity Model

13. National financial modelling indicated that the extra cost of delivering parity in allowances for kinship carers in Scotland comes to £6.6 million for 2015/16. The total gross payment for parity between all kinship and foster carers is in the region of £17 million, with the difference between the two figures a result of the contribution of the benefits system. This shows the advantage to local authorities of delivering a model which protects carer's eligibility to benefits.
14. In August 2015 Scottish Government offered to pay 50% the cost of local government delivering local parity in allowances.

15. The differential between the allowances for children and young people in foster care in comparison to kinship are significant.

	Fostering Allowance	Current Kinship Allowance
Age of child		
0-4 years	£125.09	£61.20
5-10 years	£142.49	£61.20
11-15 years	£177.38	£61.20
16-18 years	£215.74	£61.20

Residence Orders

16. There is also the second strand to kinship care which is the extension of parity in allowances to carers of former looked after children who have sought parental rights through a court order. The mechanism for doing this is called a section 11 order after the part of the Children (Scotland) Act 1995 covering the process. It is a form of permanence which means that the child is no longer considered looked after.

	Fostering Allowance	Current Residence Allowance
Age of child		
0-4 years	£125.09	£76.16
5-10 years	£142.49	£94.51
11-15 years	£177.38	£117.64
16-18 years	£215.74	£152.33

17. The payment of allowances to children who have left formal care as part of a section 11 order (s11) is discretionary on the part of the local authority. Some local authorities make payments as they see s11 orders as being a better route to a stable and permanent family than maintaining the child in the care of the authority. In East Renfrewshire there are 12 children and young people subject to these orders. Scottish Government are keen to encourage the use of s11 orders before a new variant of these orders comes into force called kinship care orders, stemming from the Children and Young People Act 2014, which will come with a requirement for some financial support from the authority. The advantage of the section 11 orders are that they allow families to access benefits, a key advantage when you consider upcoming changes to eligibility as a result of the introduction of universal credit. Scottish Government suggests that additional costs would be around £7million for 2015/16. They expect local authorities to commit to the policy on s11 orders and will pay 85% of the total cost.
18. The cost of adopting the Local Parity model for East Renfrewshire is £238,000 for Kinship and £37,000 for Section 11 Residence order.
19. While this will lead to additional costs for East Renfrewshire delivering parity between foster and kinship care and residence allowances will comply with the human rights law and as was always going to increase costs to councils. The model discussed in the report is nationally viewed as the best way of delivering parity in a managed and locally sensitive way.
20. The agreement made by COSLA and Scottish Government with Equality and Human Rights Commission to avoid judicial review is that all carers of children and young people in formal kinship and or residency will receive a parity payment from 1st October 2015. Financial modelling within East Renfrewshire has outlined that

there is a current shortfall from central funding £47,000 which is greater than the 50% funding agreement and for 2015/16 this will be met from existing budgets due to an under spend as a consequence of redesign activity. The shortfall for 16/17 has been identified as £275,000 and additional funding is being taken into account in the 2016/17 budget preparations.

21. All Kinship Carers with East Renfrewshire have been advised of the changes in their allowances and have been offered the opportunity to have a full benefits and income maximisation assessment through the Welfare Rights Team. The Finance team is in the process of calculating backdated payments to Kinship Carers.
22. Signposting arrangements have been made locally through assistance from HSCP and Welfare Rights Teams to signpost kinship carers to the Citizens Advice Scot. East Renfrewshire Council have a total of 141 looked after children, 75% of these young people are from areas of deprivation. The number of kinship carers in the last year has doubled from 15 to 30. It is predicted that kinship care will increase year on year by 25- 50% due to the strategic vision to keep children and young people within East Renfrewshire. The Care Inspectorate report of Children's Services recognised that East Renfrewshire's looked after children achieved much better outcomes when they remained within their local communities.
23. Local policies and procedures have been reviewed to take cognisance of the regulations and legislative changes for children and young people in Kinship Care.
24. East Renfrewshire's Kinship Care Panel will be operational from March 2016. The panel will approve the assessment and planning for children and young people in Kinship. Equally they will be responsible for Quality Assurance and future financial planning. The membership of the panel includes partners from Education, Legal Services and Specialist Children's Services as well as HSCP personnel.

FINANCE AND EFFICIENCY

25. There are significant financial implications in relation to this policy. The annual shortfall as currently calculated is estimated to be approximately £275,000
26. Given the predicted increase in children and young people moving to Kinship care over the next five years this is likely to have a significant impact on the Children and Families budget. Given that the vast majority of kinship carers are from our most deprived areas this is likely to increase demand in terms of the Council's responsibilities to provide not only kinship allowances under Section 22 but additional emergency needs payments also under Section 22.
27. The impact of current welfare reforms particularly with regard to disability benefits is likely to impact on children.
28. Kinship care organisations have been consulted on a national basis and so have local kinship carers.

PARTNERSHIP WORKING

29. The Kinship Panel will have the authority to make decisions to secure children and young people in Kinship and annually review Kinship placements consistent with the regulations. The fact that it is multi-disciplinary will ensure the team around the

child approach due to the opportunity to provide professional and advice and support in addition to the quality assuring the planning. . Multi-agency training in preparation for the launch of ERC'S Kinship panel has ensured a shared understanding of the function, role and remit of the panel in developing permanent destinations for children and young people.

30. Permanency policies and procedures have been developed locally to promote Kinship as part of the wider strategic aim of improving permanence destinations for all looked after children.

IMPLICATIONS OF THE PROPOSAL

Staffing

31. None

Legal

32. Legal services are aware of the changing landscape in relation to Kinship and are working with the Health and Social Care Partnership to ensure the best permanence routes are secured for some of our most vulnerable children.

Property

33. None

Equalities

34. This approach addresses the EHRC's concern about the lack of parity for children in kinship placements where they have been placed by the local authority.
35. An Equality Impact Assessment is in the process of being completed as well as the Kinship Care Policy (interim).

IT

36. None

CONCLUSIONS

37. Local authorities have been in discussion with COSLA about the impact of the Equalities & Human Rights Commission (EHRC) investigation into payment of lower kinship allowances and the disparity of foster care allowances. The view of the EHRC is that this practice breaks Human Rights law.
38. Local authorities and COSLA have been working with Social Work Scotland and Scottish Government on a solution. The agreed solution which removes the legal threat is that both foster carers and kinship carers receive the same amount of funding. The local parity model means kinship carers receive an allowance which when combined with state benefits brings them to a similar payment as a foster carer.
39. Board members need to take cognisance of the fact that this model whilst considered best practice has significant financial implications. The shortfall for East Renfrewshire is £275,000
40. An implementation plan is in place and policies and procedures have been rewritten to support the change including the development of a multi-agency Kinship Care Panel.

RECOMMENDATIONS

41. The Integration Joint Board is asked to:-

- Note the contents of the report
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REPORT AUTHOR AND PERSON TO CONTACT

Kate Rocks, Head of Children's Services & Criminal Justice (Chief Social Work Officer)

kate.rocks@eastrenfrewshire.gov.uk

0141 577 3841

January 2016

BACKGROUND PAPERS

KEY WORKS

Kinship Care, Residence Orders, Local Parity Model, Looked After and Accommodated Regulations: Part V and VIII (2009), Section 22 The Children (Scotland) Act 1995, Section 11 The Children (Scotland) Act 1995, Kinship Care Panel.