

KINSHIP CARER ALLOWANCES

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to inform Community Services Committee of the recent discussions that have taken place between the Scottish Government, Social Work Scotland (SWS), the Convention of Scottish Local Authorities (COSLA) and the Scottish local authorities. This follows the legal intervention of the Equalities and Human Rights Commission (EHRC) in support of financial parity between foster and kinship carers through the threat of Judicial Review. It is the view of Scottish Government that should there be an application for Judicial Review it will be upheld.
- 1.2 Scottish Government, Social Work Scotland (SWS) and the Convention of Scottish Local Authorities (COSLA) now advocate the adoption of a Local Parity model with regard to foster and kinship carer allowances in respect to Looked After Children. The implementation of parity between foster and kinship carers is estimated at £527,000 for 2016/17 with a further £169,000 estimated costs related to the introduction of the new kinship care arrangements. The Scottish Government has acknowledged the additional cost of parity and has offered unspecified financial support to the local authorities.
- 1.3 A demand pressure totaling £601,000 was previously agreed for 2016/17 for inclusion in the Children and Families Services budget to meet the estimated costs of allowance parity and the introduction of Kinship Care Orders. However, there remains significant uncertainty regarding the number of Kinship Care Orders that may be applied for and the additional cost which may arise as a consequence. This is due to the Council not being involved in, and therefore aware of, all of the currently informal arrangements that families have put in place that could meet the qualifying criteria for a Kinship Care Order and, subsequently, financial support from the Council.
- 1.4 It is recommended that Community Services Committee agree that :
 - a. The Local Parity Model is adopted for the payment of allowances to foster and kinship carers of Looked After Children as an interim solution to the issue of parity.
 - b. Provision is made to backdate any unpaid allowances to the 1st

October 2015 in accordance with the letter from Scottish Government dated 5th October 2015.

- c. Officers continue to work with Scottish Government, Social Work Scotland (SWS), the Convention of Scottish Local Authorities (COSLA) and the 32 Scottish local authorities in developing a longer term solution to the issue of parity.

KINSHIP CARER ALLOWANCES

1.0 INTRODUCTION

1.1 Local authorities have a duty to safeguard and promote the welfare of Looked After Children under Section 17 of the Children (Scotland) Act 1995. The Argyll and Bute Council provides care and support to Looked After Children through the provision of home supervision, residential, foster and kinship care. Since the implementation of the Looked After Children (Scotland) Regulations 2009 kinship care is increasingly viewed as being the preferred community based alternative to foster and residential care. The expectation behind the Looked After Children (Scotland) Regulations 2009 was that there should be parity between foster and kinship carers with regard to financial support.

1.2 Kinship Care is the term applied to arrangements where a child or children are no longer able to live with a parent and move to stay with a 'relative'. Within the context of modern family arrangements the term 'relative' is interpreted quite widely, and may include significant adults who are close to the child or family but not necessarily having a recognised legal or genetic relationship.

There are three broad categories of kinship care arrangements:

- Arrangements made between family members without any involvement from Social Work Services
- Arrangements facilitated by Social Work Services
- Arrangements subject to an order from the Children's Panel. Children in this final category are viewed as Looked After children to whom the Council has certain legal responsibilities

1.3 Whilst some councils have adopted financial parity between foster and kinship carers most have not and this includes Argyll and Bute Council. During the course of 2014 the Equalities and Human Rights Commission (EHRC) advised 7 non-compliant Scottish local authorities that unless they adopted parity they would face Judicial Review. The legal position as reported by Scottish Government is that should this challenge proceed to court it will be upheld. In the meantime a further 5 councils have been included in the proposed

application for Judicial Review by the Equality and Human Rights Commission (EHRC).

- 1.4 The Convention of Scottish Local Authorities (COSLA) in conjunction with Scottish Government and Social Work Scotland (SWS) invited all 32 Scottish local authorities to discuss the Equality and Human Rights Commission (EHRC) legal challenge in February 2015. At this meeting the need for all the councils to act together was emphasised and a Local Parity model was proposed as an interim solution whilst the implications arising from the introduction of Universal Credit are considered. In acknowledgement of the increased cost to the local authorities Scottish Government advised that additional financial support would be made available. A policy update and an allocation of funds were issued by letter on the 5th October 2015 by Scottish Government.

2.0 RECOMMENDATIONS

It is recommended that Community Services Committee agree that:

- a) The Local Parity Model is adopted for the payment of allowances to foster and kinship carers of Looked After Children as an interim solution to the issue of parity.
- b) Provision is made to backdate any unpaid allowances to the 1st October 2015 in accordance with the letter from Scottish Government dated 5th October 2015.
- c) Officers continue to work with Scottish Government, Social Work Scotland (SWS), the Convention of Scottish Local Authorities (COSLA) and the 32 Scottish local authorities in developing a longer term solution to the issue of parity.

3.0 DETAIL

- 3.1 Kinship care is the care of children by their extended family or by a close friend of the family. It includes children who are “looked after” by the local authority and arrangements that are made privately between family members without local authority involvement. The number of children in kinship care over the past decade has steadily increased across Scotland and this is the case within Argyll and Bute. This trend is likely to continue as research suggests kinship care generally offers the best outcomes for children and should be considered as the first option for a placement for a Looked After Child.
- 3.2 Kinship carers of children who are not looked after are currently supported under Section 22 of the Children (Scotland) Act 1995. This is discretionary and has no impact on a family’s entitlement to housing benefit and tax credits. These arrangements and payments are not presently subject to the threat of Judicial Review and parity. Argyll

and Bute kinship carers for Looked After Children are paid an allowance under Section 50 of the Children Act 1975 for the “maintenance of children” which is disregarded when calculating entitlement to housing benefit and tax credits. Argyll and Bute kinship carer allowances are presently calculated by maximising a families’ access to benefits and where necessary topping up payments to ensure that families receive a level of income equivalent to the approved/agreed rate (Appendix 1). This rate is approximately 50% of the rate currently paid to foster carers (Appendix 2).

- 3.3 The guidance for the Looked After Children (Scotland) Regulations 2009 does not specify amounts or minimum levels of payment local authorities are to make to the kinship carers of Looked After Children. As a consequence there is a wide variation in local authority practice across Scotland. However, the Concordat agreement between Scottish Government, the Convention of Scottish Local Authorities (COSLA) and the local authorities in 2007 stated that by 2011 local authorities would provide an “allowance for kinship carers of looked after children to treat them on an equivalent basis to foster carers”. During the course of 2014 the Equalities and Human Rights Commission (EHRC) have advised a further 5 Scottish local authorities that they are not compliant with the European Convention articles that relate to privacy and discrimination.
- 3.4 The Convention of Scottish Local Authorities (COSLA) in conjunction with Scottish Government and Social Work Scotland (SWS) invited all 32 Scottish local authorities to discuss the Equality and Human Rights Commission (EHRC) legal challenge in February 2015. The legal position as reported by Scottish Government was and remains that should this challenge proceed to court it will be upheld. The meeting advocated the adoption of a Local Parity Model as a way to become compliant and avoid Judicial Review. The Equality and Human Rights Commission (EHRC) have subsequently indicated to Scottish Government, Social Work Scotland (SWS) and the Convention of Scottish Local Authorities (COSLA) they would be supportive of councils adopting this type of model as this would resolve many of their concerns.
- 3.5 The Local Parity model is derived from the current practice in Inverclyde and only applies to kinship carers caring for Looked After Children. This involves the Council paying kinship carers the same allowance as paid locally to foster carers, but subtracting eligible benefits. The Local Parity model achieves parity in payment levels for kinship and foster carer 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. Under these arrangements the rate at which an informal kinship carer is

supported would remain unchanged.

- 3.6 The financial implications of Local Parity for Argyll and Bute Council are considerable. The allowances presently paid to Argyll and Bute foster carers (2015 / 2016) are banded 0 to 10 years and 11 to 18 years and are £273.19 and £327.82 per child per week respectively (Appendix 2). These allowances include a foster carer fee element of £76.48 and £87.42 respectively which is excluded from the Local Parity Model and would not be paid to the kinship carers of Looked After Children.
- 3.7 In response to the additional cost to the local authorities Scottish Government has now allocated additional funding. The total sum that the Scottish Government will transfer to local authorities to pay for this policy is £10.1 million per annum, which includes 50% of the estimated cost for formal care (£3.3 million) and 100% of the estimated cost for holders of a section 11 Order/Kinship Care Order (£6.8 million). The allocation to Argyll and Bute for 2015/16 is £58,842, as a 6 month pro rata allocation, and £117,684 per annum thereafter.
- 3.8 There are presently 47 Looked After Children in kinship care placements within Argyll and Bute. In calculating the additional cost to the Council in implementing the Local Parity model there are a number of complexities as the allowance is paid minus child benefit and tax credits. With this caveat the cost of implementation has been estimated at £527,000 for 2016/17, for the cases the Council is aware of. It is considered unlikely by Social Work Scotland that there would be a further legal challenge with regard to the backdating of any local parity agreement.
- 3.9 A demand pressure totaling £601,000 was previously agreed for inclusion in the 2016/17 Children and Families Services budget to meet the estimated costs of allowance parity and the introduction of Kinship Care Orders. However, there remains significant uncertainty regarding the number of Kinship Care Orders that may be applied for and the additional cost which may arise as a consequence. This is due to the Council not being involved in, and therefore aware of, all of the currently informal arrangements that families have put in place that could meet the qualifying criteria for a Kinship Care Order and, subsequently, financial support from the Council.
- 3.10 The adoption of the Local Parity model will only be an interim solution to the immediate legal challenge posed by the Equality and Human Rights Commission (EHRC). In the longer term the introduction of Universal Credit will pose a different set of challenges and will require another solution. Family members who look after children as part of a formal care arrangement with the local authority will not be eligible for benefits under Universal Credit, which if left unmitigated could pass on more costs to local authorities. There

will, therefore, be a need for Scottish Government, Social Work Scotland (SWS), the Convention of Scottish Local Authorities (COSLA) and the local authorities to continue working together in addressing this. It has been mooted that a national framework of allowances could offer a way forward. It should be noted, however, that a National Parity model will have implications for the local rates of fostering allowance paid as they will in future be pegged to kinship care allowances.

- 3.11 The Children and Young People (Scotland) Act 2014 has introduced the Kinship Care Order to formalise the many informal arrangements. This enables kinship carers to obtain a Kinship Carer Order under Section 11 of the Children (Scotland) Act 1995. In this respect Kinship Care Orders are similar to Residence Orders which may become deemed Kinship Care Orders in due course. Whilst further guidance with regard to Kinship Care Orders is still awaited it is becoming clear that Scottish Government intend for the carers of children on Kinship Care Orders to be afforded parity with Foster Carers. The financial implications of this are hard to project as it is difficult to determine how many Kinship Care Orders will be sought and made over the years to come. The Children and Young People (Scotland) Act 2014 also places responsibility on council to treat kinship carers like foster carers ensuring they have access to similar social work support, training and the costs attached to the Act are estimated at £137,000 in 2015/16 and £169,000 in 2016/17.

4.0 CONCLUSION

- 4.1 The threatened legal challenge by the Equality and Human Rights Commission (EHRC) with regard to financial parity between foster and kinship carers caring for Looked After Children requires a response. It is clearly the intention of Scottish Government that a Local Parity Model be adopted as an interim solution.
- 4.2 The adoption of a Local Parity model to deliver parity between foster and kinship carers has significant financial implications. Based on the existing number of Looked After Children in kinship care placements and the projected number of Kinship Care Orders the additional cost to the Council has been estimated at £527,000 for 2016/17 for the placements the Council is aware of.
- 4.3 Although additional funding totaling £601,000 is in place to fund allowance parity and the introduction of Kinship Care Orders, there remains significant uncertainty regarding the overall cost to the Council of allowance parity and the new Kinship Care Order requirements.
- 4.4 Kinship carers will come into the social work system and Argyll and Bute will continue to pay them until the child reaches adulthood. This will place financial strain on the Children and Families Service.

- 4.5 The phased introduction of Universal Credit renders the Local Parity Model to be an interim solution. It is, therefore, important that officers continue to work with Scottish Government, Social Work Scotland (SWS) the Convention of Scottish Local Authorities (COSLA) and the other Scottish local authorities in finding a longer term solution to the issue of parity.

5.0 IMPLICATIONS

- 5.1 Policy The financial policy for the assessment of kinship carer allowance for the kinship carers of Looked After Children will need to be revised.
- 5.2 Financial The additional cost of implementing a Local Parity Model of allowances has been estimated at £527,000 for 2016/17. There remains significant uncertainty however regarding the overall cost as the Council is not aware of the full extent of the currently informal family arrangements which could qualify for Kinship Care Orders and, subsequently, financial support from the Council. A demand pressure totaling £601,000 was previously agreed for inclusion in the 2016/17 Children and Families Services budget to meet the estimated costs of allowance parity and the introduction of Kinship Care Orders. Kinship parity payments are separate from the duties placed on the Council through the Child and Young People (Scotland) Act 2014. Children and Families will need to financially, emotionally and practically support kinship carers until the child reaches adulthood, placing significant financial strain on the system.
- 5.3 Legal The adoption of a Local Parity Model will avert the immediate risk of Judicial Review. Enquiries have established that COSLA has not taken legal advice from Counsel and those councils which have are unlikely to share that advice. Argyll and Bute Council has, however, taken the advice of legal Counsel in this matter which is reflected in this paper.
- 5.4 HR There are no immediate HR implications.
- 5.5 Equalities The Equality and Human Rights Commission (EHRC) have identified the absence of parity between foster and kinship carers for Looked

After Children as a matter of discrimination.

- | | | |
|-----|------------------|--|
| 5.6 | Risk | The reputational and financial risk to the Council of not implementing a Local Parity model is significant. |
| 5.7 | Customer Service | The implementation of a Local Parity model will greatly improve the material circumstances of Looked After Children in kinship care. |

Cleland Sneddon
Executive Director of Community Services

Policy Lead
Cllr Mary Jean Devon

1st November 2015

For further information contact:

Louise Long	Head of Service, Children and Families
Alex Taylor	Locality Manager, Oban, Lorn and the Isles

APPENDICES

Appendix 1 Kinship Carer Allowances 2015 / 2016

Appendix 2 Foster Carer Allowances for 2015 / 2016

Appendix 1 Kinship Carer Allowances 2015/2016

Age Banding	Weekly Rate
0-4 years	76.94
5-10 years	95.53
11-15 years	117.42
16 plus	153.97

Child Benefit	
1 st Child	20.70
2 nd or subsequent children	13.70

Kinship payments are calculated by taking the weekly rate (above) and deducting for any child benefit.

If the family is in receipt of child benefit for any other children in their care, the lower amount would be deducted.

Appendix 2 Foster Carer Allowances for 2015/2016

Breakdown of Foster Carer Allowances for 2015/2016

	2015/16	
	0-10 yrs	11-18 yrs
Weekly Rate	273.19	327.82

Description	2015/16	
Carer's component	76.48	87.42
Clothing & footwear	32.78	43.71
Food	32.78	43.71
Household costs	19.13	19.13
Pocket money & leisure	19.12	30.03
Childcare	13.66	13.66
Training & meetings	13.66	13.66
Travel	13.66	13.66
Personal care	7.11	18.03
Insurance/wear & tear	19.13	19.13
Birthday & religious festivals	12.02	12.02
Holidays	13.66	13.66
Weekly Allowance	273.19	327.82