

**CHILDREN & YOUNG PEOPLES
COMMITTEE****Agenda Item 63**

Brighton & Hove City Council

Subject:	Introduction of a Charging Policy for Children who are Accommodated at the request of their parents under Section 20 of the Children Act 1989		
Date of Meeting:	11 January 2020		
Report of:	Executive Director Families, Children and Learning		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that there were technical difficulties over the Christmas period in obtaining the legal comments in order to complete the report.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The report lays out the circumstances in which the local authority can seek to costs, in defined circumstances, when a child becomes Looked After at the request of parents. It proposes that as a local authority Brighton and Hove introduce charging costs, in order to see to recoup partial costs from parents.

2. RECOMMENDATIONS:

- 2 The CYPS is recommended to approve the introduction of the Charging Policy, pending ratification at Policy and Resource Committee, as set out in Appendix 1 to seek to recoup partial costs in defined circumstances when a child becomes Looked After at the request of parents.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Parents can request that their child should become Looked After by a local authority under Section 20 of the Children Act 1989. If this happens, both birth parents can be required by law to contribute toward the child's maintenance, irrespective of whether or not they have contact with the child.
- 3.2 In certain circumstances, parents will not be required to contribute if:
- They are in receipt of some means tested benefits including Income Support, any element of Child Tax Credit other than the family element of Working Tax Credit, income-based Job Seekers Allowance, or income related Employment Support Allowance.

- The child is subject to an Interim Care Order, Care Order, Emergency Protection Order or subject to Police Protection.
 - The child is remanded into local authority foster care, or subject to a Youth Rehabilitation Order with an attached Residence Order (Child Arrangement Order).
 - The child is detained under S38(6) of the Police and Criminal Evidence Act 1984, or under S92 of the Powers of Criminal Courts (sentencing) Act 2000
 - The accommodation is provided as part of an aftercare service under section 117 of The Mental Health Act
 - The child is placed with parents under S22(c) of the Children Act 1989
 - Parents who have relinquished their child to be adopted will not be charged.
- 3.3 Family and Friends option (kinship care), in terms of alternate care, will always be discussed and explored with families before a child enters care.
- 3.4 If parents are separated and one is exempt due to any of the reasons above, the other parent will still be subject to financial assessment.
- 3.5 The proposed policy is based on similar policies that are in place in other high performing local authorities. The two authorities who use a similar policy in the South East are both rated Outstanding by Ofsted. Both authorities report that families still seek support, but that it has enabled them to have a different conversation about whether care is the best option.
- 3.6 The local authorities we have consulted with have indicated that actual use of the policy is extremely limited and that it is seen more as a deterrent and as part of a more general response to prevent families abdicating responsibility for their children. While one of the SE Local Authorities introduced it this year the other has had it in place for a number of years, they are a large authority and report using it once or twice a year, as above they use it to stop parents abandoning their adolescent children's care to the local authority. They do not believe it has stopped families who need help from social care in accessing their services.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 A liable parent can be required to contribute a weekly amount to the care of their child, the level of which will be decided after a financial assessment has been completed by the BHCC staff in the FCL Directorate. The amount of the contribution expected from parent/s for each child should never be more than the foster care rate. In Brighton and Hove, it is recommended the rate is set at 50% of the lowest foster care rate for the child's age band (appendix 1), this is considered fair and retrievable and would be irrespective of the actual cost or placement type, such as a residential placement or independent foster carer.

The amount will be adjusted each year to reflect changes in the foster care rate. For example, in 2019/20 12-18 age group the rate is £241 per week, therefore the calculation becomes 50% of this or £120.50 per week.

- 4.2 As this amount will be collected each calendar month the following calculation would be applied:
 $\text{£ } 120.50 \times 12 = \text{£ } 1,446 \text{ per year: Divided by 12} = \text{£ } 120.50 \text{ per calendar month}$
- 4.3 Consideration of a financial contribution will become part of the process when a child enters care at the request of their parents. Thereafter an annual review of financial circumstances will take place within Safeguarding and Care to ensure the contribution remains at a suitable rate in

response to any changes in either parental circumstances and/or any adjustments made to the DfE recommended fostering allowance.

- 4.4 In cases where parents are separated but are both found to be liable, the charge will be divided equally between the parents. Where a Maintenance Order is in force in respect of the child, the sum as detailed in the Contribution Agreement will be claimed from the parent who receives the Maintenance Order.
- 4.5 If the parents do not agree that they are able to afford to contribute the amount as calculated they will be asked to evidence this by completion of the financial assessment and to discuss this with their child's social worker, for further consideration by the relevant Head of Service. The Head of Service may apply discretion on the basis of the family's individual circumstances which may include:
- What the circumstances leading to the child being accommodated are. For example, if a single parent was hospitalised for a short period of time and had no one to care for their children it might be considered not worth seeking to recoup costs for this short period.
 - Whether there are specific financial pressures affecting the parents that means that strict adherence to this policy is likely to be counter-productive in the context of working towards the child being rehabilitated to the parents.
 - Parents of a child with disabilities are subject to the same rules under Part III of Schedule 2 of Children Act 1989. However, in certain circumstances where there is assessed to be risk of harm arising from the child's disability that cannot be reduced without the need for accommodation, parents will not be charged. These circumstances could include the following:
 - A. Those children whose needs, including medical needs, are so complex that the child essentially requires 24 hour care or similar.
 - B. Those children whose behaviour, as a result of their disability, is so frequently challenging that it is only reasonable for the authority to offer to accommodate the child as an option for supporting the family – often there will be a significant risk of harm to the child, a sibling, or to another family member.
 - C. Those children who are consistently disruptive throughout the night and where no other intervention has been able to ameliorate the impact on the rest of the family.
- 4.6 When parents are assessed to be liable and able to contribute to the care of their child, BHCC is empowered to apply to the Court for a Contribution Order requiring parents to make weekly contributions. No application would be made providing that there is agreement to contribute financially. If no payment is forthcoming within 1 month of the child(ren) becoming Looked After, however, or if payments are not made regularly, the Council has the right to seek to enforce payment by initiating legal proceedings in the courts.
- 4.7 The draft policy (Appendix 2) has been drawn up in consultation with colleagues in both Orbis Law and Business Operations and is considered to be both legally compliant and deliverable operationally.
- 4.8 A full Equality Impact Assessment is available at Appendix 3.

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1

6. CONCLUSION

- 6.1 We have seen an increase in the number of request from parents who feel they no longer can manage their challenging teenagers and at the same time refuse to work with us to look at wider family support. This is causing considerable pressure on the social work system, numbers in care and budgets. It is hoped that by focusing parents' attention on the fact that even in care they have responsibility for their child it may act as a lever for some to work in a different way with the local authority.
- 6.2 Within a wider Council budget that is under pressure, the specific budget that supports the care of children who are Looked After continues to be very challenging. It is reasonable to expect parents to contribute to the costs for their child to be cared for when they request it and if they can afford to do so. It encourages parents not to abdicate responsibility for their child and emphasises the importance of parents continuing to be involved in their child's life. It is unlikely in reality, however, that this will generate much or any income but may act as a partial deterrent to those parents who could work with us to find alternative solutions for their child, could afford to contribute but are presently not expected to do so, or who are unwilling to do so.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The potential income per placement as set out in paragraphs 4.1 and 4.2 would be approximately £6,300 per annum. In reality, for a number of reasons, it is not envisaged that this charge would be applied more than two or three times a year, therefore income would not be more the £0.020m per annum. However, it is hoped that this will act as a partial deterrent and reduce the number of children requiring foster care. On average a child placed in foster care (with an independent foster agency) costs £39,100 per annum. It is thought that potentially two to three placements could be diverted each year making a saving of up to £0.117m.
- 7.2 As it is likely that there will be very few assessments needed, at this stage it is not anticipated that any additional costs will be incurred in administering the process.
- 7.3 There is a risk of some reputational damage should the local authority need to enforce debt recovery measures in the event of parents defaulting on contributions.

Finance Officer Consulted: David Ellis

Date: 18/11/2020

Legal Implications:

- 7.4 Local authorities cannot seek to charge accommodation which is necessitated arising from care proceedings, and are obligated to provide accommodation for any child who meets the criteria in s20(1), which includes "the person who has been caring for him being prevented (whether or not permanently or for whatever reason) from providing him with suitable accommodation" The report

provides a policy framework by which the Council can determine whether it is appropriate to exercise discretion to charge for the accommodation into care of a child under S20 Children Act 1989, when that accommodation is at the request of the parent or lawful carer for the child. The statute actually mandates that the authority consider recovering a contribution in some circumstances: Schedule 2 para 21.1) of the Act specifically provides that “where a local authority are looking after a child (other than in the cases mentioned in sub-paragraph(7)) they shall consider whether they should recover contributions towards the child’s maintenance from any person liable to contribute.” Under the Act charges cannot be imposed on any parent in receipt of benefits and financial contributions should only be recovered where it is where it is reasonable to do so ((Schedule 2 para 21 (2)), as the policy provides. Under S22. (1) contributions towards a child’s maintenance may only be recovered if the local authority have served a notice on the contributor specifying (a) the weekly sum which they consider should be contributed; and (b) arrangements for payment. If payments are not forthcoming the statute provides a mechanism for a court application for a “contribution order” requiring the contributor to contribute a weekly sum until such time is the child is no longer accommodated.

Lawyer Consulted: Natasha Watson

Name Date: 04/01/21

Equalities Implications:

- 7.5 The cohort of families that will be covered by the proposal to charge parents will be very small. Attention has been paid to identifying exemptions and to allowing senior staff discretion not to apply the policy, when it is deemed inappropriate to the safety and welfare of the child concerned, including when a child is disabled. Costs will not be imposed where parents are in receipt of a means-tested benefit and will be reviewed if parental situations change. It is anticipated that this proposal will impact on a very small number of families each year and the EIA has not identified any disproportionate impacts on any legally protected or other groups.

SUPPORTING DOCUMENTATION

Appendices:

1. Foster carers allowances
2. Charging Policy for Children Looked After by Brighton and Hove City Council under Section 20 Children Act 1989
3. EIA

