

CHESHIRE EAST COUNCIL

REPORT TO: CHILDREN AND FAMILIES SCRUTINY COMMITTEE

Date of Meeting: 19/6/12
Report of: Julie Lewis/Gill Betton
Subject/Title: Foster Carer Capital Support Policy
Portfolio Holder: Cllr Hilda Gaddum

1.0 Report Summary

1.1 This report seeks endorsement from Scrutiny Committee to the proposed policy for foster carers to access capital funding to expand or maintain existing placements.

2.0 Decision Requested

2.1 Scrutiny Committee is requested to:

- a) Consider the funding routes by which the capital funding is provided to foster carers based on the options outlined at Appendix 2; and
- b) Endorse the proposed outline of the policy set out in Appendix 1;

3.0 Reasons for Recommendations

3.1 The foster carer capital support policy will support the local authority's requirement to provide sufficient and suitable accommodation for cared for children. This policy will enable a number of skilled and able foster carers to extend the number of places they are able to offer or to maintain existing placements whilst complying with national statutory requirements. This policy is in line with a recommendation from Scrutiny Committee that a budget be created to enable Cheshire East to pay commercial mortgage rates for home modifications in order to allow prospective carers to take on their first or additional placements.

3.2 Scrutiny Committee is asked to endorse the proposed policy against the level of risk to the local authority.

4.0 Wards Affected

4.1 All wards.

5.0 Local Ward Members

5.1 Not applicable.

6.0 Policy Implications including - Carbon reduction, Health

6.1 If approved, this proposal would introduce a new policy for the local authority to support existing foster carers with capital expenditure.

6.2 An equality impact assessment is underway. It is expected that this policy will have a positive impact on groups with the protected characteristics.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

7.1 £249,000 of approved funding is currently available in the 2012/13 capital budget for Cheshire East Foster Care Loans/Grants (Short Break Re-provision). At present this funding is forecast to be spent by March 2013.

7.2 The intention is to use this funding in 2012-13 to demonstrate savings made to the Fostering Service by maximising existing internal placements rather than using more costly agency places or recruiting new foster carers. The proposal is to use this evidence to secure 'invest to save' funding for future financial years.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 The legal requirements around providing sufficient and suitable accommodation for foster carers and children in care are set out below.

8.2 Children Act 1989 - Sections 22C(5),(7), (8), (9), (10) and 22G of the 1989 Act require the local authority to take steps to secure, so far as is reasonably practicable, sufficient accommodation to meet the needs of looked after children in their local authority area. These must be the most appropriate placement available.

8.3 Fostering Services: National Minimum Standards (NMS) - Standard 10 of the NMS sets out the requirements to provide a suitable physical environment for the foster child. This includes the following minimum standards:

10.1) The foster home can comfortably accommodate all who live there including where appropriate any suitable aids and adaptations provided and fitted by suitably trained staff when caring for a disabled child.

10.6) In the foster home, each child over the age of three should have their own bedroom. If this is not possible, the sharing of a bedroom is agreed by each child's responsible authority and each child has their own area within the bedroom. Before seeking agreement for the sharing of a bedroom, the fostering service provider takes into account any potential for bullying, any history of abuse or abusive behaviour, the wishes of the children concerned and all other pertinent facts. The decision making process and outcome of the assessment are recorded in writing where bedroom sharing is agreed.

8.4 If the funding is to be spent by the Council commissioning services on behalf of foster carers then there is a requirement that it complies with competitive procurement process. The Council has Framework Agreements for building works.

- 8.5 If the money is provided by way of a grant then the terms of the grant must be clear. Whilst the level of funding is below EU threshold, grant funding could potentially be state aid as the Council is enriching the recipient of the grant by providing an asset or a means to enhance an existing asset.
- 8.6 In the case of an unsecured loan, payments will ultimately be recovered via a debt recovery process (County Court) if necessary. It should be noted that the Council does not have a debt recovery resource available.
- 8.7 In the case of a secured loan, the debt would be secured against the foster carers' property as a legal charge. If repayment is triggered then the amount of the loan which remains to be repaid can be converted to a repayment loan or can be repaid once the property is sold (i.e. if the Council were to decide to adopt a policy whereby it will not re-possess a property which is the main residence of former foster carer).
- 8.8 The Council has a fiduciary duty to deploy the financial resources available to best advantage and the basis upon which loans will be provided will need to be considered in the light of this duty. The basis upon which capital support could be provided and repayment requested are set out more fully in Appendix 2.

9.0 Risk Management

- 9.1 The main risk is that the local authority pays a loan (conditional upon the foster carer remaining a foster carer for 10 years) and that the foster carer tenders their resignation within the 10 year term of the loan, thus triggering repayment. Without security in terms of loan repayment (ie the loan is not secured as a legal charge), the Council is at risk of losing this investment. Recovery of an unsecured debt is not certain and the Council will need to follow a debt recovery process and will not automatically be entitled to recover the sums due from the foster carer's available assets.
- 9.2 If the Council decides to make unsecured repayment loans (such as in relation to vehicles) the main risk is that the foster carer does not make repayments (either during the course of their continuing relationship with the Council as foster carers or following their resignation).
- 9.4 Whether payment is by means of a secured or unsecured loan then payments will need to be monitored to ensure that they are used for the designated purpose. To mitigate the risk, consideration could be given to payments for works upon property being made in stages and directly to the contractor and payments for cars being made directly to the garage providing the vehicle/making the adaptation.
- 9.5 There is potential for abuse of the scheme if the mechanisms for payment and recovery of the loans are not robust.
- 9.3 Risks associated with each of the funding options are set out in Appendix 2.

10.0 Background and Options

Cheshire East Context

- 10.1 There are currently 182 foster carers in Cheshire East; 124 mainstream carers and 58 family and friends carers. In addition, there are currently 117 children in agency foster placements. Together they help to provide care for the 429 cared for children in the local authority.
- 10.2 The average cost of recruiting a new foster carer is estimated at around £10k. The average weekly cost of a Cheshire East foster carer placement is £301 or around £15.5k each year per child.
- 10.3 Where internal placements are not available or suitable, the Council uses Agency placements at a significantly higher cost. Cheshire East currently spends around £65k each week on agency placements - an annual cost of around £3.4m. This is an average of £555 per week or £29k per year for each child placed.
- 10.4 Given the available capital budget of £250k and an anticipated average spend of around £15k, it is expected that only 15-20 or around 8 to 11% of the total number of foster carers will benefit from the funding in 2012-13. An analysis of resignations in 2011-12 would suggest that around 7 of those who left fostering would warrant recovery of funds under a loans policy. This equates to less than 1 each year if the 8 to 11% is applied.
- 10.5 Cheshire East has a target to approve 15 mainstream foster carers in the year 2012-13 and to increase the number of mainstream foster carers by a minimum of 7 households.
- 10.6 A number of existing foster carers are willing to increase the number of places they offer or maintain existing placements through adaptations to their home to make them more accessible, increasing the number of bedrooms available in their property or increasing the size of their car to accommodate additional children. This policy would allow the Council the flexibility to make funding decisions such as these where they met the terms of the policy.

Funding Route Options

- 10.7 The options requiring consideration by Scrutiny Committee are set out at Appendix 2.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Proposed Outline Policy

Policy Objective

Children live in foster homes which provide adequate space and to a suitable standard and foster carers are able to transport these children safely.

Eligibility

Capital funding will only be provided to:

- Foster carers who are registered by Cheshire East Council; or
- Family and friends carers of children who are under a care order.

Where the child is in the placement at the time of the application, then:

- The proposed placement should be consistent with the child's Care Plan;
- and the proposed placement must be approved by the Fostering Panel.

Criteria

Applications for funding will be assessed against the following criteria, ie that they:

- promote and ensure the best interests of the cared for child/children concerned;
- provide stability of a foster placement;
- provide a cost-benefit to Cheshire East Council substantiated through an application/business case in line with the policy; and
- be only payable where the foster carer can demonstrate that they have not been able to access other government grant/social funding options.

Purpose and funding available

The funding available and the use of funding is set out below:

Purpose of funding	Type of funding	Maximum funding
a) <u>Special Needs - adaptations</u> To provide the facilities necessary to enable the placement of a child with special needs with a foster carer who, if they were in a permanent placement, would be eligible for the Disabled Facilities Grant.	Grant	Up to £15,000
	Loan	£15,000 to £30,000
b) <u>Special Needs – equipment</u> To install or provide specialist equipment within the home or to adapt a vehicle for a child with special needs.	Grant	£15,000

c) <u>Special Needs – vehicle</u> To provide or adapt a vehicle for a child with special needs.	Grant	£10,000
d) <u>Mainstream adaptations – existing places</u> To provide adequate accommodation for children in an existing placement in line with Fostering Regulations and Minimum Standards.	Grant	Up to £15,000
	Loan	£15,000 to £30,000
e) <u>Mainstream adaptations – increased places</u> To enable existing carers to offer an increased number of placements in line with the recommendations for maximum numbers under the current regulations and in line with the appropriate terms of approval as established by assessment and/or foster carer review.	Grant	Up to £15,000
	Loan	£15,000 to £30,000
f) <u>Mainstream vehicle</u> To provide a vehicle that will safely transport the foster child/ren along with existing permanent family members, ie, where a larger vehicle is required.	Grant	£10,000

General Conditions

The following conditions will apply to all applications:

- The maximum grant/loan allocated across a) to f) above will be £30,000 in any 5 year period.
- The maximum funding for spend on vehicles will be £10,000.
- Repeat applications for vehicles will be considered no less than every 5 years.
- For building works, the foster carer must provide:
 - Proof of ownership (in freehold and leasehold cases, this will be title documents).
 - Consents of mortgagee and any occupier (someone over 17 who may have interest in property), freehold owner (if leasehold) and any superior leasehold owner or joint owner not in occupation.
 - A Written valuation.
 - An up to date mortgage statement.

Loan Conditions

- In the case of loans, ie, funding over £15,000, the Council will secure the funding by way of a legal charge on the foster carers property.
- To obtain a legal charge, the foster carer must be the owner of the property.

- The foster carer will need to obtain prior written consent of any existing mortgage in order for the Council's charge to be registered at the Land Registry.
- Any occupier, freehold owner, superior leasehold owner will need to consent to the legal charge (sign deed of consent)
- The loan amount will reduce at a rate of 10% of the original amount, or £1,000, (whichever is greater), per year up to 10 years.
- The amount that is converted to a grant each year is taxable and must be declared on the foster carer annual statement of earnings

Rented Property

Grants for adaptations will only be considered where the property is rented from:

- A Local Authority; or
- A recognised Housing Association.

The foster carer must provide:

- The name and address of the landlord;
- The terms of the tenancy; and
- The written agreement of the landlord for the adaptations.

Approval

- All grants and loans will be approved by the Principal Manager, Cared for Children upon receipt of an application form and supporting information.
- The Principal Manager will also consider the last review for the foster carer and the also the child/ren in placement.
- The Principal Manager may request further information to confirm that the foster carer meets the eligibility and criteria of the loan.
- Applications will be considered in line with the funding available and once the budget has been committed in a financial year, no further applications will be considered.

Payments

Payment will be made in the following way:

- For amounts up to £10,000 – as a lump sum;
- For amounts over £10,000 up to £15,000 – in two stages, as agreed at the approval stage (usually at the beginning and end of the work being done);
- For amounts over £15,000 – in three stages, as agreed at the approval stage (usually at the beginning, middle and end of the work being done).

Payments for works upon property will normally be paid directly to the contractor.

Payments for cars will normally be paid directly to the garage providing the vehicle.

Appeals

It is recognised that there may be situations where the refusal of assistance would disproportionately disadvantage a foster carer. In these circumstances, the Council may waive or alter some or all of the eligibility criteria, minimum or maximum amounts, or conditions of assistance based on the individual circumstances, and approve the application for assistance. All cases will be considered on an individual basis in a fair and transparent way through the Appeals process.

All appeals will be considered by the Head of Service, Social Care.

The decision of the Head of Service, Social Care will be final in respect of that individual case and will not be binding upon future applications made by that or any other applicant.

Grant Repayments

Generally foster carers will not be expected to repay a grant. However, the Council reserves the right to request repayment of a grant in certain circumstances, for example, if the foster carer sells or otherwise disposes of a funded vehicle. These conditions will be set out in the agreement between the Council and the foster carer.

Loan Repayments

- Loan agreements will remain in place for 10 years.
- Should the foster carer remain registered for the whole of the term, then no repayment would be required.
- Any outstanding loan would be repaid within the 10 year period in circumstances which would prevent the foster carer from fulfilling the condition of the loan. Such circumstances would include ill health, death, bankruptcy, allegation of abuse (unfounded or otherwise).
- Where the loan is secured on a property, then consideration could also be given to including the sale of the property as a trigger for repayment within the 10 year term.
- If repayment is triggered, it will be at the discretion of the Council to consider whether to demand repayment.
- If the Council considers that in the circumstances of the case re-payment will be required, then the policy may also allow the loan to be converted to a repayment loan or repayment to be deferred (repaid if the foster carer transfers the property to someone else).
- Decisions made by the Council about whether to demand repayment would be subject to the policy's appeal process.

Financial Options for Developing Loans to Foster Carers

Option and Description	Financial Risk to LA	Pros	Cons
<p><u>Secured loan</u></p> <ul style="list-style-type: none"> A loan is secured against a physical asset. Therefore, if the loan is secured against a property, then the lender will register a legal charge on the title of the property at land Registry (i.e. a mortgage). 	<p align="center">Low</p>	<ul style="list-style-type: none"> It is more likely that funding can be recovered in the event of a default in the term of the loan. The Council remains in control of the funding so it can re-consider the position against the circumstances that exist at the time should repayment be triggered. Council has a greater level of control as the foster carer cannot deal with that asset (ie sell it or re-mortgage it) without the Council's consent. If circumstances trigger repayment then the Council is not compelled to demand repayment and can make a decision (on a case by case basis) about whether the circumstances which trigger repayment warrant payment being demanded. The policy could provide for partially repaid loans to be converted to repayment loans or re-payment be deferred until the foster carer transfers the property. 	<ul style="list-style-type: none"> It is proposed that this type of loan would not apply to loans for vehicle as this is a depreciating asset. This option would exclude those in negative equity or in rented accommodation from obtaining loans to carry out works on property (although the circumstances of each case can be considered further under the appeal process – see 10.8). There is a question as to whether this level of security is proportionate given the role of foster carers. There is an administrative cost associated with the mechanism of securing loans (cost of children's services and legal services time and registration fees charged by Land Registry – legal services time and fees in region of £250 per loan). The conditions whereby the Council would expect foster carers to repay against their property would need to be very clearly established.

<p><u>Unsecured loan with local land charge/notice registered</u></p> <ul style="list-style-type: none"> • With an unsecured loan the lender has no right to the property or other assets of the borrower if the money is not paid back. • A loan can be drafted so that repayment is related to sale of the property or from the proceeds of sale and a local land charge can be registered against the property which would mean that the lender is informed if there are any changes in the property. • A notice can be registered by agreement. • For use where the unsecured loan relates to works on property 	<p>Medium to High</p>	<ul style="list-style-type: none"> • Foster carers might be more inclined to accept an unsecured loan than potentially put up their property as collateral. 	<ul style="list-style-type: none"> • Whilst this option would inform the Council if there were any changes to the property in the future, it would not guarantee that money could be recovered if the foster carer defaulted on the terms of the loan. The local land charge does not appear in the part of the register which deals with statutory charges (those which the law compels are repaid from the net proceeds of sale). It is notice of the existence of an unsecured debt (but could be missed by the seller's solicitor). • Repayment of the loan would need to be via a debt recovery process if repayment was triggered or the loan was not repaid upon sale. • Any debt will need to be recovered via a County Court Judgement. • The Council would not be consulted should the foster carer re-mortgage their property. The potential funds available for repayment from the equity in the property could potentially be used up leaving the Council with a money judgement. • There is an administrative cost associated with the mechanism of setting up an unsecured loan not dissimilar to that of securing a loan but with less prospect of repayment from the available asset. • Recovery of the debt would require resourcing and the Council does not provide a debt recovery service.
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<p><u>Unsecured loan with no registration requirements</u></p> <ul style="list-style-type: none"> • With an unsecured loan the lender has no right to the property or other assets of the borrower if the money is not paid back. With no other requirements, the lender would not be aware of any changes in the property. • The loan could provide for regular repayments 	<p>Medium</p>	<ul style="list-style-type: none"> • This approach is more acceptable in relation to a depreciating asset (car). • The agreement can include terms in which the money will be recovered – bankruptcy, sale, from insurance monies (if an insurance write off) • The loan could provide for repayments to be made from money provided by the Council (ie. foster carer allowance) which would reduce the administrative burden of monitoring repayment for the service department (although it would direct that the allowance be used for this particular purpose). 	<ul style="list-style-type: none"> • A County Court Judgement would be needed to recover any outstanding loan and this could be costly to the local authority.
<p><u>Grant</u></p> <ul style="list-style-type: none"> • Funding is given for a specific purpose. Whilst there may be conditions attached to grant funding, a failure on the part of the foster carer to meet the conditions of the grant may mean that any further sums due may be withheld, it is unlikely to result in clawback of the sums paid. 	<p>High</p>	<ul style="list-style-type: none"> • Would be easier and cheaper to administer as no need to tie into loan repayments or to recover debt. 	<ul style="list-style-type: none"> • The local authority would have no recourse to recover the funding should the foster carer resign.