

Note to: Children Leadership Team
Date: 21.10.19
From: Abu Siddique
Subject: Child Arrangements Order and Residence Order Allowance Policy

Approved By

Finance: X	Legal: X
Other:	HROD:

Introduction

Most Child Arrangements Orders are made in private law proceedings, where the local authority is not involved. Such orders can however also be made in respect of children, who are currently in the local authority's care, including those placed with Connected Person Carers either temporarily or fully approved. In other cases, the local authority may support a family member to apply for an order. The local authority itself cannot apply for such an Order. Where a child is the subject of a care order, the local authority can apply for the discharge of the order and invite the court to make a Child Arrangements Order in favour of a Foster Carer or a family member.

A Child Arrangements Order can therefore arise in any of the following circumstances:

- As a result of private law proceedings where the local authority is not looking after the child and is not considering looking after the child;
- As a result of private law proceedings brought by family members who are caring for the child as an alternative to the child becoming a child in care. Such an application will usually be supported by the local authority, which may contribute to the court fees and/or other legal costs;
- As a result of private law proceedings brought by connected person carers of a child in care. This will usually be supported by the local authority. In most such cases, the child will be accommodated under s20 as opposed to a Care Order;
- At the conclusion of an application for discharge of a Care Order, where the child's Final Care Plan is permanency with the Foster or Connect Person carers long-term and the child's assessed needs can be met by the carers without the continuing need for a Care Order;
- At the conclusion of care proceedings, where the outcome of the decision-making process is that the child's Final Care Plan is for the child to be

permanently cared for long-term with family members, but the child's assessed needs do not require the child to be subject to a Care Order.

In all of these cases, the court will also have the option of making a Special Guardianship Order.

Child Arrangements Orders can be made until the child reaches 18 years.

There is no statutory right for a person in whose favour a Child Arrangements Order has been made to receive a financial assessment in relation to Child Arrangements Order allowances. However, the local authority has a power to make a discretionary contribution to a person in whose favour a Child Arrangements Order has been made, except where the order is made in favour of a parent. This allowance, known in Manchester as a Child Arrangements Order Allowance, is seen as a contribution towards the child's maintenance; there is no power to include any element of reward in the calculation of the payment.

The purpose of this policy is to set out Manchester City Council's ("the local authority") approach to Child Arrangements Order Allowances. The scheme of the policy is as follows:

- eligibility criteria;
- the level of the allowance;
- duties of notification by the local authority and by those in receipt of a Child Arrangements Order Allowance;
- commencement of payment;
- review, variation and termination of the allowance;
- overpayments; and
- appeals

This policy shall be reviewed on the first anniversary of its coming into force and thereafter at the discretion of the local authority.

Statement of Values Principles and Objectives

The child's welfare is paramount and the needs of the child must be at the forefront of all decision making.

Manchester City Council recognises that for the vast majority of children private / informal arrangements work well to meet the needs of the child, and that with the provision of support at the earliest opportunity, there should be no requirement for intervention by the Council.

Children should be enabled to live within their families and communities unless this is not consistent with their welfare. For most children, the best prospect for their emotional, physical, social, cultural, language and legal needs to be met will be to remain with, or return to live with their birth parent/s. Many children who cannot live with a parent (or another person with parental responsibility) live with a relative or friend. The majority of family / friend carers living arrangements do not need the support of the local authority.

The majority are established independently between the child's parent(s) and the family / friend carers. The local authority should not become involved with these arrangements unless it is deemed necessary to safeguard and promote the welfare of the child.

When the local authority does become involved in the arrangements for a child living with, or going to live with, a family / friend – this should be based on a thorough assessment of the child and the family / friend carers. Children's Services will work in partnership with children and their families in planning and decision making about their future care.

It is essential for the legal basis under which the child is living is clearly stated, confirmed in writing and understood by all parties.

This policy reflects the 'No Order' principle of the Children Act 1989, *'the aim ...of the Children Act 1989...is to ensure that an Order is granted only where it will positively improve the child's welfare'*, (Children Act 1989 Guidance and Regulations, Vol. 1).

Where it is assessed that a child cannot remain with, or return to their birth parents, then care by Family & Friends Carers will be the placement of first choice to meet these needs, provided this is consistent with the child's welfare.

Every child has the right to have the opportunity to develop secure attachments to carers who are capable of providing safe and effective and loving care for the duration of his/her childhood, so that child can thrive and develop.

Under these circumstances, carers should be advised and supported to obtain an appropriate legal order giving them legal responsibility for the child through a **Child Arrangements Order, Special Guardianship Order or Adoption Order**.

Support should be based on the needs of the child rather than merely their legal status and should seek to ensure that family and friends carers (whether or not they are approved foster carers) are provided with support to ensure that children do not become, voluntarily accommodated by the local authority under section 20(1) of the Children Act 1989.

Legislative Context

Under the Children and Families Act 2014, Residence Orders were replaced by Child Arrangements Orders. All Residence Orders are deemed to be Child Arrangements Orders for the purpose of this policy and decisions made under it.

Applications for Child Arrangements Orders are usually between private individuals, under s.8 Children Act 1989. Under a Child Arrangements Order the Court can determine who the child is to live with or when the child is to live with any person. A Child Arrangements Order may also set out the details of a child's contact with specified persons. Child Arrangements Orders (Contact) do not fall within the scope of this Policy.

Under Schedule 1, paragraph 15, of the Children Act 1989 where a child lives, or is to live, with a person as the result of a Child Arrangements Order, a local authority may make contributions to that person towards the cost of the accommodation and maintenance of the child. These contributions are known as a Child Arrangements Order Allowance.

The power to make contributions does not apply where the person with whom the child lives, or is to live, is a parent of the child or the husband or wife or civil partner of a parent of the child.

Eligibility Criteria

The local authority's decision on whether to support a Child Arrangements Order will be based on a robust social work assessment of the child's situation, including child's wishes and feelings, and carers' ability to meet the child's short and long term needs.

The statutory power to pay an allowance is not restricted to cases where the child is a child in care, or indeed to cases where the local authority has pre-existing involvement. However, the Council has adopted the following policy in relation to the decision whether to pay an allowance in individual cases:

A Child Arrangements Order Allowance may be considered:

- Where an approved foster carer or Connected Person Carer (including temporary approval) applies to the court for a Child Arrangements Order with the support of the Council, in respect of a child who is already a Child in Care (whether accommodated under s20 or the subject of a Care Order); or
- Where the local authority has issued care proceedings and where a court is satisfied that the child cannot remain in the care of the parent, but decides that it is in the child's best interests to make a Child Arrangements Order in favour of a foster carer, Connected Person Carer or other adult connected with the child instead of a Care Order;
- Where a Child Arrangements Order is made in favour of a relative or other person connected with the child and such an application is supported by the local authority and is a clear alternative to applying for a Care Order and there is sufficient evidence to satisfy the threshold criteria for the making of a care or Supervision Order.

In each of the above cases, an allowance will not be paid unless it has been decided that:

- The making of a Child Arrangements Order in respect of proposed carers would be in the child's best interests; and
- This reflects the child's plan for permanence; but
- This would not have been practicable without the payment of an allowance, having fully taken into account the financial and domestic circumstances of the applicant.

The situation when this is most likely to happen is where foster/carers are caring for a child and acquiring Parental Responsibility forms part of their overall wish to care for the child on a permanent basis.

There are also situations where somebody with whom the child is not living wishes to acquire Parental Responsibility and care for the child on a similar basis. This may include a relative of the child or a non-relative with whom the child has formed a relationship.

Allowances will not normally be paid where a child is not, and is not at risk of becoming looked after. This reflects the Council's policy that priority should be given to its duty to promote the upbringing of children within families by reducing the need for children to become or remain children in care and is in accordance with statutory guidance. Exceptionally, an allowance may be considered in other cases, where the child is not, and is not at risk of becoming, a child in care.

There is no power to pay an allowance if the person with whom the child lives or is to live, is a parent of the child or husband, wife or civil partner of a parent of the child.

The allowance ceases to be paid if the child no longer lives with the carer on a full time basis, if the Child Arrangements Order is discharged, if the annual review of the carer's financial circumstances establishes that they are no longer eligible for payment. Annual review may also lead to the level of payment being varied. Whilst carers' financial circumstances remain unchanged, the allowance will be paid up to the young person's 18th birthday unless the court has provided that that the order will expire before then.

Recipients of Child Arrangements Order Allowances will be provided with written materials describing how the scheme works and the expectations they must comply with.

Requests for financial support from other persons (not falling within the above criteria) will be considered, but unless the Local Authority is satisfied that there are exceptional circumstances, a financial assessment, including a means test, will not be conducted and no allowance will be paid. It is not possible to specify the sort of circumstances which might be regarded as exceptional because case by case consideration is required.

In all cases, the applicant must live within the United Kingdom in order to qualify for the allowance. The Council would support a Child Arrangements Order for a Manchester child and pay allowances according to the same criteria as set out above for applicants living outside the Council's boundary. Similarly, if a child has come to live with carers living the Council's area on a Child Arrangements Order, the placing local authority would have the ongoing financial responsibility.

The Allowance

The calculation of the Child Arrangements Order Allowance will be, as a starting point:

- the weekly level of payment is determined by a financial assessment (means test). The Child Arrangements Order Allowance is based on the local authority fostering allowance band one rate. The rate of payment is linked to the age of the child. A deduction is made in respect of Child Benefit and Tax Credits paid for the child;
- will not include any reward or remuneration or fee element which may be available to a foster carer;
- will not include any additional sum in respect of birthdays, religious festivals, holidays or school uniform, all of which are expected to be provided for from the allowance and /or family resources.

The Child Arrangements Order Allowance is means tested. This will take into account the financial resources of the holder of the Child Arrangements Order including any financial benefit in the form of maintenance, welfare benefit payments or other forms of income or capital arising from the placement of the child. The local authority uses the Department for Education and Skills recommended standardised means test model.

The amount of the allowance, if awarded, will be reduced pound for pound by the amount of Child Benefit, Child Tax Credits and any other welfare benefits / maintenance payments received for the child which would not be available to a foster carer.

In determining the level of allowance the local authority will also take into account the financial needs/resources of the child (if any) excluding mobility/attendance allowance/benefits related to disability.

The local authority will consider an application for one off payment under s.17 of the Children Act 1989. These are discretionary payments to be decided on a case by case basis following assessment of the needs of the child and family.

The level of allowance may be adjusted to include an enhanced payment where the local authority considers that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of illness, disability, emotional or behavioural difficulties, the consequences of past abuse or neglect, or other exceptional circumstances. In considering the applicability and amount of this adjustment, the local authority will have regard to any disability related benefits or other sources of funding available to the family in respect of the child. Payments will only be made for the child after all other alternatives in terms of benefits, grants and services have been explored, and the level of the child's needs will be reviewed annually.

An enhanced payment may be made, exceptionally, in circumstances falling outside the scope of the criteria detailed above at the discretion of the Head of Service.

Consideration may be given to assistance by way of a financial contribution towards legal and court costs but this will be dependent on individual circumstances. Such assistance will only be considered when the local authority supports the carer's proposal to apply for a Child Arrangements Order. The applicants will be expected to apply for Legal Aid if it is available to them. Any support with legal costs of conducting proceedings will be subject to a condition that the local authority will pay no more than the applicable legal aid rates for the work undertaken.

For approved foster carers who have been fostering a child who becomes the subject of a Child Arrangements Order, transitional payments may be made in respect of the carer's Fostering Fees that cease to be paid when a Child Arrangements Order is made. Details of transitional payments where these apply will be included in the Proposal letter.

Notification of the decision

If the local authority decides not to pay an allowance in cases where they have the discretion to do so, the local authority will write to the holder of the Child Arrangements Order setting out the decision made and the reasons for that decision.

Where the decision is made to pay a Child Arrangements Order Allowance the local authority will write to the holder of the Child Arrangements Order setting out:

- the amount of the allowance;
- the date of the first payment; and
- the method and frequency of payment

Commencement of payment

The payment of a Child Arrangements Order Allowance may begin from the date of the Child Arrangements Order.

Notifications by those in receipt of an allowance

Those in receipt of a Child Arrangements Order Allowance must promptly notify the local authority of changes in their circumstances or those of the child. In particular, the local authority must be notified if:

- the child dies;
- the child ceases to live with the holder of the Child Arrangements Order / Residence Order;
- The child ceases full time education or training and commences employment, qualifies for universal credit, income support, jobseekers allowance or employment support allowance in his own right; or
- the Child Arrangements Order/ Residence Order is revoked; or
- there is a change of address.

The notification should take place promptly and in any event within 28 days of the relevant change in circumstances.

An applicant for, or person in receipt of an Allowance must provide such information as is reasonably requested by the local authority to enable it to be satisfied that the Allowance should be paid/ continued. Failure to do so may result in non-payment or cessation of an Allowance.

Review, variation and termination

Eligibility for the allowance, and the proportion payable to a particular Child Arrangements Order holder, are subject to an annual review, which will consider both the changing needs and circumstances of the child and family. The Model Means test will be applied annually or on receipt of notification of a change in circumstances prior to the annual review. The carer is expected to provide all financial information requested by the local authority. The annual review will be administered by the Council's finance team.

The Child Arrangements Order Allowance will be varied as the child moves into the next age band, from the date of the child's birthday.

The Child Arrangements Order Allowance will cease if:

- the child dies;
- the child ceases to live with the holder of the Child Arrangements Order;
- the Child Arrangements Order is revoked;
- The child ceases full time education or training and commences employment, qualifies for universal credit, income support, jobseekers allowance or employment support allowance in his own right; or
- The child becomes 16 or 18 (in accord with the age limit provided in the Child Arrangements Order).

- The carer fails to provide the Council with an annual statement of income, in which case the Council may deem the carer's need for an allowance to have ceased until such a time as a statement is supplied.

Overpayment

If an overpayment has been made the local authority will be entitled to recover the overpayment.

Appeal mechanism

If dissatisfied with a decision as to payment or amount of allowance, the holder of the Child Arrangements Order may appeal against any decision relating to the provision of a Child Arrangements Order Allowance.

You must give reasons why you think our decision is wrong or wrongly made under a) or b) above and must provide information to support your appeal.

You should write to us with your reasons and email or send your letter to:

Deputy Strategic Director of Children's Services
Manchester City Council
Town Hall Extension
4th Floor
PO BOX 532
Manchester
M60 2LA