

## CROYDON COUNCIL

<b>REPORT TO:</b>	<b>Corporate Parenting Panel</b> <b>9 July 2014</b>
<b>AGENDA ITEM NO:</b>	<b>11</b>
<b>SUBJECT:</b>	<b>London Borough of Croydon “Staying Put” Policy</b>
<b>LEAD OFFICER:</b>	<b>Paul Greenhalgh,</b> <b>Executive Director, Children, Families &amp; Learning</b>
<b>CABINET MEMBER:</b>	<b>Cllr Alisa Flemming,</b> <b>Cabinet Member for Children, Families &amp; Learning</b>
<b>WARDS:</b>	<b>All</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT: Children and Families Partnership priority as part of Looked After Children Sub-Group</b>	
<b>FINANCIAL IMPACT: None</b>	
<b>1. RECOMMENDATION</b>	
1.1 That the Corporate Parenting Panel approve the Staying Put Policy.	

## **2. Executive Summary**

- 2.1 The Care Matters White Paper, May 2013, contained a significant focus on improving the support for children preparing for adulthood, including guidance on enabling young people to remain with their foster carer/s beyond the age of eighteen.
- 2.2 The White Paper builds on the steps taken in the Children and Young Persons Act 2008 to support care leavers. The Children and Young Persons Act 2008 introduced the Higher Education Bursary of £2000 for care leavers under the age of 25 wishing to take up a programme of higher education, and the requirement for the local authority to provide personal advisor support for care leavers under the age of 25 accessing higher education or training.
- 2.3 The White Paper introduced new guidance and regulations providing for care leavers to remain with their former foster carer/s as a “Staying Put” arrangement. Local Authorities are required to develop “Staying Put” policies that provide foster carers and young people with information and guidance relating to all aspects of continuing the young person’s

accommodation with their carer beyond the young person's eighteenth birthday. Young people accommodated in "Staying Put" arrangements with their former foster carers are care leavers and the status of the arrangement is akin to that between a landlord and tenant. The former foster carer has no responsibilities under the fostering regulations for the care leaver remaining in their accommodation.

- 2.4 The financial arrangements for Staying Put arrangements are complex because the local authority is expected to make only a contribution towards the costs of the accommodation, the majority of the cost being met by the young person's housing benefit or income. The White Paper acknowledges the complexity of the tax and pensions implication of this income source for the former foster carer and has issued guidance that attempted to 'harmonize' DfE, DWP and HMRC definitions and frameworks. The requirement on local authorities to have and to publish their "Staying Put" policies became law with the Children and Families Act 2014.
- 2.5 This report provides further background and a proposed policy for consideration by the Committee. This report provides further background and a proposed policy for consideration by the Committee.

### **3. Background to the proposed Croydon policy**

#### **3.1 Introduction and context**

The Care Matters White Paper contained a significant focus on improving the support for children preparing for adulthood including details about what the 'Staying Put' arrangements should be for Care Leavers aged 18 and above to stay on with their former foster carers. This included guidance that brought together the DfE, DWP and HMRC frameworks in an attempt to harmonize the complex income, pension and taxation issues.

To meet the new duties towards care leavers in the Children and Young Persons Act 2008, the new guidance and regulations relating to care leavers emphasize a more graduated approach to planning transition to adulthood. The average age of leaving home is rising and the transition to adulthood is increasingly becoming "more complex and elongated." The "Staying Put" initiative is a way to extend a care leaver's transition to adulthood within a family environment. The intention being to ensure that young adults can remain with their former foster carers until they are prepared for adulthood, can experience a transition akin to their peers, avoid social exclusion, and be less likely of a subsequent housing and tenancy breakdown.

From the age of eighteen young people are no longer legally 'in care' or 'looked after' and therefore fostering arrangements and the legislation relating to children placed with foster carer/s no longer applies to "Staying Put" arrangements. In circumstances where a young person remains with their former foster carer/s after their eighteenth birthday, the arrangement should therefore be deemed an 'age eighteen and older arrangement' or

“Staying Put” arrangement. The term ‘arrangement’ should be used rather than placement; the term ‘placement’ denotes a situation where the local authority arranged and placed the child with a foster carer. Once the child reaches the age of eighteen and legal adulthood, the local authority is no longer making a placement, but facilitating a “Staying Put” arrangement for the young person.

Local Authorities were required by the White Paper to develop “Staying Put” policies that provide foster carer/s and children/young people with information and guidance relating to all aspects of continuing the young person’s accommodation with their carer beyond the young person’s eighteenth birthday. The policy should cover the following areas:

- Criteria for continuing a fostering placement as a “Staying Put” arrangement once the child reaches 18.
- Impact of the “Staying Put” arrangement on the financial contribution provided by the authority and how the young person’s Housing Benefit and funding for housing related support, will contribute to meeting some of the “Staying Put” costs; and the financial contributions from young people from their wages, salary, benefits or education allowances.
- How the Income Tax, National Insurance and welfare benefits situation of carer/s may be affected by “Staying Put” payments.
- Insurance issues, including liability insurance and household insurance;
- Impact on foster carers’ approval and their terms of approval, including the numbers approved for, and whether this number includes the “Staying Put” young person.
- Safeguarding arrangements, including Criminal Records Bureau checks on young people reaching eighteen where fostered children remain living in the household.

The policy requirement became a legal requirement with the Children and Family Act 2014, which amended the Children Act 1989 to include Staying Put Arrangements, and is set out in Appendix 1.

The Staying Put Arrangements have been widely misinterpreted to mean that the arrangement applies whenever it is wished for by the care leaver and the former foster carer, and that the local authority will fund the arrangement at the same rate, or a slightly reduced rate, as that which the former foster carer was receiving when they were caring for the young person as a looked after child. These costs would be a significant burden for Croydon with 560+ care leavers aged between 18-21 years. At fostering rates the average costs per week (lower for our in-house carers) would be between £250 and £450 per week. There is a need to educate social workers, care leavers, foster carers, and private fostering agencies to the actual guidance and legislation, and in June / July 2014 the Fostering Service will be delivering training and discussion sessions with these groups. The basic principles of the guidance are that:

- 1) The Staying Put arrangement should meet an assessed transitional need of the care leaver and that this assessment is clearly reported in the Pathway Plan for the young person from age 16 years so that the arrangement is properly planned, understood by all parties, appropriately funded, and with a clear aim and purpose.
- 2) The Staying Put arrangement should meet the criteria of the local authority for funding contribution and agreement – the criteria are stated in the Policy document.
- 3) The benefits / income of the care leaver should go towards the total cost; the rate of payment to the former foster carer being determined by the local “room rate”.
- 4) The Staying Put arrangement is akin to the arrangement between a landlord and tenant.
- 5) There are safeguarding considerations as well as possible consequences for the foster carer status (for other children who may be placed) of the former foster carer, and pension, income, and tax considerations that need to be taken into account.

#### **4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

Central Government will be contributing £40m over 3 years to all Local Authorities to assist with the costs of implementing the “Staying Put” requirements. The grant instruction for individual local authority’s (Croydon) share will be issued by the end of June 2014. There are currently 11 care leavers who are fully funded under 23C “Staying Put” arrangements. With a leaving care population of 560 in the age group 18-21 there is the possibility of more “Staying Put” arrangements becoming established. At this stage the financial implications are difficult to model.

It will only be possible to model the financial implications of this development, once the level of government grant is known. However, our proposed policy does not further increase the risk of additional cost to the local authority.

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**BACKGROUND DOCUMENTS:** *London Borough of Croydon Leaving Care Policy 2014; Children and Families Act 2014*

**Appendix 1: The Legislation: Children and Families Act 2014, Part 5 Welfare of Children, Section 98**

**Appendix 2: London Borough of Croydon Proposed Staying Put Policy**

**Appendix 1: The Legislation: Children and Families Act 2014, Part 5 Welfare of Children, Section 98:**

(1) Each local authority in England have the duties provided for in subsection (3) in relation to a staying put arrangement.

(2) A “staying put arrangement” is an arrangement under which—

(a) a person who is a former relevant child by virtue of section 23C(1)(b), and

(b) a person (a “former foster parent”) who was the former relevant child’s local authority foster parent immediately before the former relevant child ceased to be looked after by the local authority, continue to live together after the former relevant child has ceased to be looked after.

(3) It is the duty of the local authority (in discharging the duties in section 23C(3) and by other means)—

(a) to monitor the staying put arrangement, and

(b) to provide advice, assistance and support to the former relevant child and the former foster parent with a view to maintaining the staying put arrangement.

(4) Support provided to the former foster parent under subsection (3)(b) must include financial support.

(5) Subsection (3)(b) does not apply if the local authority consider that the staying put arrangement is not consistent with the welfare of the former relevant child.

(6) The duties set out in subsection (3) subsist until the former relevant child reaches the age of 21.”

(3) In Part 2 of Schedule 2 (local authority support for looked after children) after paragraph 19B (preparation for ceasing to be looked after) insert—

*“Preparation for ceasing to be looked after: staying put arrangements*

19BA (1) This paragraph applies in relation to an eligible child (within the meaning of paragraph 19B) who has been placed by a local authority in England with a local authority foster parent.

(2) When carrying out the assessment of the child’s needs in accordance with paragraph 19B (4), the local authority must determine whether it would be appropriate to provide advice, assistance and support under this Act in order to

facilitate a staying put arrangement, and with a view to maintaining such an arrangement, after the local authority cease to look after him or her.

(3) The local authority must provide advice, assistance and support under this Act in order to facilitate a staying put arrangement if—

(a) the local authority determine under sub-paragraph [\(2\)](#) that it would be appropriate to do so, and

(b) the eligible child and the local authority foster parent wish to make a staying put arrangement.

## Appendix 2: Proposed London Borough of Croydon Staying Put Policy

### 1. Introduction

We care for the majority of our looked after young people aged below 18 years in foster care placements with foster carers who can meet their needs for a loving and stable family life, and help in preparing them to make the transition to adult independence and to their own accommodation after their 18<sup>th</sup> birthday as agreed within the Pathway Plan. Like any good parent, our aim is to see our looked after children grow to be successful and independent adults, and our work with looked after children from age 16 onwards is focused on enabling development of the life skills necessary to make the transition from care at 18 years to independence. The great majority of our care leavers feel prepared for independence at age 18 and actively want to transition to their own accommodation. Some care leavers remain with their former foster carer/s under arrangements that pre-date the “Staying Put” guidance. These arrangements have included Supported Lodgings funded from the Supporting People grant, or where the former foster carer/s has become their adult carer because of disability, or where the council has fully funded an extension of the placement to enable the care leaver to complete their secondary education at ‘A’ level or equivalent, or where the care leaver has decided to pay rent to their former foster carer and remain with them as a tenant. These young people are no longer looked after children and fostering arrangements and conditions no longer apply. It is essential that the foster carer and their supervising social worker are fully involved in the planning stages of these arrangements as this may affect the carer’s fostering status, tax liabilities, income, and benefits entitlements.

A “Staying Put” Policy is a requirement within the Children and Young Persons Act 2008 and the Planning Transition to Adulthood for Care Leavers 2010 (Regulations and Guidance). This policy aims to set out the criteria to promote the extension of stay with foster carers beyond the young person’s 18<sup>th</sup> birthday. It is hoped to result in more effective transition from care to adulthood and independence. It aims to avoid sudden disruption to young people who need stability during critical stage of specific educational programme. Young people who turn 18 are no longer “looked after” and therefore fostering arrangements would no longer apply. The “Staying Put” scheme is not an extension of fostering arrangement as regulated by fostering and care planning regulations. Instead “Staying Put” is a special arrangement to allow young person who fulfil set criteria to temporarily remain with their former foster carer beyond their 18<sup>th</sup> birthday, subject to conditions set in this policy. The “Staying Put” arrangement is described in the White Paper as being akin to a tenancy – the care leaver is effectively a lodger and the former foster carer is their landlord under a *License Agreement* that must be completed in every arrangement. Duration of stay will either be fixed or reviewed at the discretion of the local authority.

This “Staying Put” policy specifies the conditions required to extend a

former fostering arrangement and as set out in the young person's Pathway Plan. These conditions should facilitate reasonable identification of young persons who should benefit from the "Staying Put" arrangements considering education, vulnerability and planned move-on conditions.

## **2. "Staying Put" Definition**

The Department for Education defines "Staying Put" to cover the following arrangements, where:

- ◆ A young person who was looked after immediately prior to their eighteenth birthday (as an eligible child) continues to reside with their former foster carer/s.
- ◆ The carer/s were acting as foster carers to the child immediately prior to the young person's eighteenth birthday.
- ◆ a young person is deemed an eligible child (s.19B(2) of Schedule 2 of the Children Act 1989, immediately before he/she reached eighteen.
- ◆ The "Staying Put" arrangement is set out in the child/ young person's Pathway Plan.
- ◆ A proportion of the allowance paid to the "Staying Put" carer is paid by the Children's Services under s.23C of the Children Act 1989.
- ◆ The "Staying Put" arrangements extends until the young person first leaves the "Staying Put" arrangement, or the young person reaches 21 yearly and still lives in the arrangement or the young person completes the agreed programme of education and training being undertaken on their 21st birthday, if continuously living in the arrangement since their 18th birthday.

Different definitions of "Staying Put" arrangements are used by the Department for Work and Pensions and H M Revenue and Customs.

### **2.1 Eligibility for the arrangement**

"Staying Put" arrangements will be considered and approved at our discretion for specific young persons who were in fostering placement immediately prior to their 18<sup>th</sup> birthday, to continue to reside with the former foster carer, based on criteria outlined below.

The assessed need for a "Staying Put" arrangement will be as set out in the child/young person's Pathway Plan. Details will be clarified at final review prior to 18<sup>th</sup> birthday at which point the arrangement should be confirmed.



Exceptions to these conditions will be at the local authority's discretion.

## **2.2 Criteria for the arrangement**

### **Education:**

A young person may remain with former foster carer in a Staying Put arrangement to complete an education programme or special training course subject to the following conditions:

- ◆ The education or training must be full time and apply to the course being undertaking on or before 18th birthday. A full time course is one that, on average, more than 12 hours a week in term time is spent on tuition, practical work, supervised study, taking exams or work experience if it is part of the course of education.
- ◆ The education criteria will apply to young people doing A2 Level, BTEC Level 3 and equivalent courses.
- ◆ The arrangement starts the day after 18th birthday and ends on 31st August after the young person completes the agreed course in the preceding July.
- ◆ The arrangement will also cease if and when the young person leaves the course or transfers to another course. At this point, the young person will move to independent accommodation. In this situation, the ""Staying Put" arrangement once stopped cannot be carried over for future use.
- ◆ Proof of the full time education programme including details of the course, college, start and end dates must be submitted for verification as part of pathway planning and to facilitate decision making process.
- ◆ Young people who will be starting university no more than two months after their 18th birthday and will be moving specifically into the university halls of residence may be considered for a ""Staying Put" arrangement for this short period.
- ◆ Young people at university may use this arrangement as vacation accommodation if it has been agreed that their normal term time accommodation is not available or if they must leave the term-time accommodation during university holidays.
- ◆ It should be noted that vacation accommodation is not a "Staying Put" arrangement; therefore payment for this period will be at the rate of a shared dwelling.
- ◆ The duration payments for these arrangements must be fixed.

### **Vulnerability:**

We will consider and approve "Staying Put" arrangements for vulnerable

young people. This includes, but is not limited to, those young people who are pregnant and those with physical disabilities, severe learning difficulties and special needs, a serious history of self-harming or substance misuse. We will use the "Staying Put" arrangement for vulnerable young people pending their transfer to adult services, supported housing or other suitable accommodation. The support costs element in these "Staying Put" arrangements may be covered by Supporting People Funding.

### **Planned Move-On:**

We will consider other special circumstances which warrant a delay in the transition to adulthood and independence. These cases will be considered and agreed on an individual basis, at our discretion.

## **3. The Regulatory Framework**

### **Suitability of accommodation and insurance**

- 3.1** We must be satisfied that the accommodation provided by the "Staying Put" provider under the arrangement is suitable and meets the requirements of Regulation 6, 7 & 9 and Schedule 2 of the Planning Transition to Adulthood Guidance, which includes the Care Leavers (England) Regulations 2010.

"Staying Put" providers will be expected to have in place appropriate liability insurance and suitable household insurance.

### **3.2 Where foster children are living in the "Staying put" arrangement**

In a "Staying Put" arrangement where a foster child is in placement in the household in addition to care leaver who is remaining under this arrangement, the following conditions will apply:

- ◆ The foster carer must remain an approved foster carer and the Fostering Services (England) Regulations and Guidance 2011 will apply.
- ◆ Checks and requirements under fostering regulations will only be applicable to the fostered looked after child. The "Staying Put" policy with requirements under Leaving Care Regulations will apply only to the young person who continues to reside with their former foster carer post-18 under the "Staying Put" arrangement.
- ◆ Standard Change of Circumstances process will still be carried out as the "Staying Put" young person will be 18 and become an adult member of the foster carer/s household. The foster carer/s will need to be returned to the fostering panel.
- ◆ A valid DBS check will also be required for the care leaver remaining in the "Staying Put" arrangement prior to their 18<sup>th</sup> birthday. Subsequently safeguarding and risk assessment checks will generally be carried out.

### **3.3 Where no foster children are living in the "Staying Put" arrangement**

- ◆ Consideration will be given to the deregistering/ termination of the foster carer's approval as a foster carer if they are unlikely to be caring for any future foster children. The arrangement will be reviewed to ensure it complies with local authority's expectations
- ◆ Safeguarding and risk assessments will continue for household members and/or regular visitors
- ◆ Health and safety requirements, including compliance with relevant landlord and tenant requirements will be monitored
- ◆ Regular supervision and support from their fostering supervising social worker will be maintained if possible
- ◆ There will be opportunity to attend appropriate training.

## **4. Staying Put – Financial Arrangements**

### **4.1 Allowances for Young People:**

From their 18<sup>th</sup> birthday, we will stop paying young people a weekly allowance or pocket money through the foster carer or other third party. From this point, young people must claim welfare benefits for all their living expenses. In general, we will take into account benefits claimed before or after their 18th birthday. The "Staying Put" provider's allowance will exclude any personal allowance for the young person. This does not however prevent consideration for separate payments as applicable under Section 23C(4) (a), (b) and (c) of the Children Act 1989. These payments are disregarded as income in the assessment of young persons' benefit claims.

### **4.2 Welfare Benefits for Young People:**

From the age of 16, young people can claim means-tested benefits for their living expenses or personal needs while living with foster carers and later, during the "Staying Put" arrangement. At the commencement of this arrangement, all young people must claim benefits for their living expenses.

These benefits are Income Support, Employment and Support Allowance and Jobseekers Allowance which are mainly claimed at 18. These benefits are paid at the same DWP personal allowance rates but additional premiums may be paid due to the age of the lone parent or the extent of their disability or health condition.

### **4.3 Income Support (IS):**

At 18 years old care leavers, who remain "estranged" from their family and

are in 'Relevant Education' can claim Income Support. Relevant Education as termed under benefits regulations means undertaking a full time non-advanced education of over 12 hours guided learning each week. Normally this entitlement may continue until age 22 if the young person has enrolled or remains on a full time non-advanced course at 21. Non-advanced education includes courses under HND or degree level, such as A-Level, BTEC and NVQ courses.

From the age of 18 and from 11 weeks before due birth date, Lone Parents can claim Income Support until the child is 5 years old. They can also claim Sure Start Maternity Grant (1<sup>st</sup> child only), and Healthy Start Vouchers. They will also be eligible to claim Child Benefit and Child tax Credit after the birth of the baby. Eligible and Relevant lone parents aged 16 & 17 can only claim Income Support, Healthy Start Vouchers and Sure Start Maternity Grant from the birth of their baby, unless they are also in receipt of Employment & Support Allowance.

#### **4.4 Employment & Support Allowance (ESA):**

- ♦ Young people with disability or health condition can claim Employment & Support Allowance from their 16<sup>th</sup> birthday subject to fulfilling the relevant criteria.
- ♦ Eligible and Relevant lone parents aged 16 & 17 receiving ESA will be able to claim Income Support, Healthy Start Vouchers and Sure Start Maternity Grant from 11 weeks before their due birth date.

#### **4.5 Personal Independence Payment (PIP):**

- ♦ Young people with disability or health condition may also claim Personal Independence Payment which replaced Disability Living Allowance from April 2013.

#### **4.6 Jobseeker's Allowance (JSA):**

- ♦ Young people aged 18+ who are not in full time education, and who are registered as unemployed and as available for and actively seeking full time work can claim Jobseeker's Allowance.

The benefits named above will not affect the foster or "Staying Put' carers' own benefits should they be claiming themselves.

#### **4.7 Young people not eligible to claim benefits - Asylum**

Generally to be eligible to claim benefits, you must have the right to reside in the UK and be habitually resident. Young people who are asylum seekers can claim benefits if they have been granted discretionary leave to remain in the UK or UASC leave and they can continue to claim benefits after expiry of the leave if they made a timely application for an extension. Asylum seekers without any right to remain or who failed to make a timely

application for extension are disqualified from claiming benefits as they are to have no recourse to public funds.

#### **4.8 Changes to Welfare Benefits System:**

The Welfare Reform Act 2012 introduced Universal Credit to replace several working age benefits, including, income-based JSA and ESA, Income Support, Housing Benefit, Child Tax Credit and Working Tax Credit. Universal Credit will be paid in arrears, on a calendar monthly basis, in a single payment including Housing Benefit which will change to Housing Costs. Young people like all benefit claimants have to face the challenge of receiving their benefits monthly instead of the old weekly payment method.

Housing costs will not normally be paid to a third party such as the landlord however alternative payment arrangements direct to the landlord or Children's services as agents for the landlord may be allowed for vulnerable claimants including care leavers.

#### **4.9 Other Benefits:**

Further financial support will be available for young people in times of crisis or hardship through the Discretionary Support Scheme, provided the criteria are met. Administered by Croydon Council, the Discretionary Support Scheme replaced the former Community Care Grant under Social Fund managed by DWP.

#### **4.10 Help to claim benefits:**

Advice and support will be available to young people on the benefit claim process as part of benefit take up arrangements. There is a DWP advisor based with the Leaving Care Team from January 2014 to assist with the claims process. Care leavers also have the assistance of their allocated social worker or personal adviser.

#### **4.11 Housing Benefit for Young People**

Looked after or relevant children and young people are not eligible to claim Housing Benefit (HB) until their 18<sup>th</sup> birthday when they become 'former relevant'. To claim housing benefit, young people must have a liability to pay rent, established on a commercial basis and formally on a tenancy or licence agreement. The housing benefit department will consider the commerciality of the arrangement.

Housing Benefit can be claimed towards rent in private sector properties, council and housing association properties, specific bed and breakfast accommodations and hostels registered under social housing.

Housing benefit claimed for rent in the private sector properties may be pre-determined by Local Housing Allowance (LHA) rates. Local Rent Officers can carry out a pre-tenancy determination, upon request, in advance of the

housing benefit claim being submitted to determine the level of housing benefit that will be paid on a given property.

Care leavers' HB claim may be based on one-bedroom self-contained rate until they are aged 22 when it will be based on one-bedroom in a shared property. Consequently young people renting an individual self-contained accommodation may need to vacate the property at 22 or will have to make up the resulting rent shortfall.

Generally housing benefit may only cover 'eligible' rent which means rent exclusive of charges such as utilities, meals and support. Therefore it is important that the licence agreement shows the rent cost separate from other charges. A letter/license agreement and the full payment/ costs broken down into rent, support, utilities and food/meals will need to be provided by the Staying Put carers and endorsed by Children's Services, to enable and assist the housing benefit department establish the young person's liability to pay rent. We will provide a standard licence agreement template endorsed by Children's Services by way of assistance.

#### **4.12 Where no meals or food are provided within the "Staying Put" arrangement**

Where no meals or food are provided within the "Staying Put" arrangement the level of housing benefit is determined using the Local Housing Allowance. Care leavers are covered by the "protection" from the shared accommodation rate offered by Regulation 13D(2)(ii) of the Housing Benefit Regulations 2006/213. Accordingly, care leavers with a genuine rental liability are eligible to claim up to the one-bedroom self-contained Local Housing Allowance rate. See also, paragraph 8(i)(i) below.

#### **4.13 Where meals/food are provided within the "Staying Put" arrangement**

Where meals/food are provided within the "Staying Put" arrangement the level of housing benefit is based on a reasonable rent for a one-bedroom dwelling with meals included which is set by the Local Rent Officer. A Local Reference Rent or a Claim Related Rent for their home is provided and used to determine the maximum amount they will receive towards their rent, less an amount for meals. Once they reach 22 years of age, the rent will be met to the *Single Room Rent*

In cases where a young person is not entitled or could only get part housing benefit due to earnings or capital, the young person will need to make full or part rent payments independently.

#### **4.14 Rent liability**

All young people in "Staying Put" arrangement will have rent liability under a commercial arrangement and will be expected to claim housing benefit to cover the rent element of the overall costs of the arrangement. Where the carer is paid the total "Staying Put" cost including non-section 23 elements,

the housing benefit will be reimbursed to Children's Services as a third party housing benefit payment to cover the accommodation cost. Alternatively the rent element may be taken into account and deducted from the carer's allowance. The local authority may consider reimbursing any loss of benefit incurred by the foster carer under section 23C payments.

#### **4.15 Non-commercial Staying Put arrangements**

The local authority has the discretion to meet all the costs of the accommodation arrangement under 23C, in which case the arrangement is deemed non-commercial in the DWP and HMRC frameworks. In this situation, the young person will not be eligible for Housing Benefit, and the payments to the provider are disregarded as income.

#### **4.16 Former kinship foster carers**

A carer leaver remaining in a "Staying Put" arrangement with a former foster carer to whom they are related (Kinship carer) cannot claim Housing Benefit. A "relative" is defined in the "Staying Put Guidance" as a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, sister, step-parent, stepson, stepdaughter or the partners of any of these. In this situation, the "Staying Put" arrangement must be non-commercial and the full cost may be covered by section 23C which will not affect carers in receipt of means-tested benefits.

However, if the young person is in employment, agreed contributions will be made from earnings to cover all or part of rent and charges. "Staying Put" carers who are not in receipt of any means-tested benefits will receive the "Staying Put" allowance less agreed contributions from the young person.

#### **4.17 Council Tax and Council Tax Benefit**

In April 2013 national Council Tax Benefit rules were abolished and replaced by a localised scheme for Council Tax Reduction. Croydon Council administers a Council Tax Support (CTS) Scheme, the key features of which are:

- ◆ CTS will not be paid to those with more than £8,000 savings.
- ◆ All those of working age, who are not working but who are not in a protected group, will pay at least 15% of their council tax liability.
- ◆ All those of working age that are working and are not in a protected group, will be asked to pay at least 15% more of their council tax liability.
- ◆ The contribution towards council tax costs which any other adult living in the household will be asked to make has been increased to 40%.

- ♦ Adults receiving Jobseeker's Allowance or students will now have to make the minimum 15% contribution.
- ♦ The second adult rebate has been abolished.

Children do not have a liability for Council tax until their 18th birthday. Most young persons in full time education or claiming Income Support will be exempt from council tax liability. However, care leavers who are jobseekers or in employment may be liable to contribute at least 15% of their liability.

If the "Staying Put" arrangement has a negative impact on the provider's maximum council tax support or council tax discount Children's Services may consider covering any equivalent liability incurred by the former foster carer. Alternatively, the young person will be expected to make extra contributions to the "Staying Put" arrangement to cover the specific liability incurred.

#### **4.18 Rent, Housing Benefit and Tenancy Licence Agreement**

Croydon Council will assist young people ensure that the terms of their licence agreements are valid and enforceable, that the "Staying Put" arrangement and housing benefit conditions are satisfied. We will provide advice on the appropriate level of rent and other costs using guidelines set by Children's Services.

We will provide a standard licence agreement template endorsed by Children's Services. This will set out rent, utilities, food/meals and support costs. In addition, it will specify the young person's contributions and personal rent payments from those who are not entitled to housing benefit.

When setting the level of rent and other charges, Children's Services will consider the factors namely Local Housing Allowance (LHA) rates, realistic rents within a shared dwelling and young people's disposable income from welfare benefits personal allowance.

#### **4.19 "Staying Put" providers claiming means-tested benefits**

Payments made to the "Staying Put" providers from the Local Authority Children's Services under section 23C of the Children Act 1989 on behalf of the young person will always be disregarded when calculating the former foster carer's entitlement to means tested welfare benefits. The section 23C DWP disregard only extends until the young person first leaves the arrangement. If a young person returns to a "Staying Put" arrangement, having left, the whole payment from whatever source will be taken into account by the DWP.

If the young person claims housing benefit towards the rent cost, this becomes a commercial arrangement. The non-section 23C element will be treated as if it were income from a "Boarder." Consequently payment from housing benefit claim will be taken into account and this may have an



impact on the "Staying Put" provider's own welfare benefit claim.

"Staying Put" providers who are in receipt of two means-tested benefits (say income support and housing benefit) will be re-assessed for these benefits due to the income from the arrangement. If Income Support continues to be paid, they will be entitled to maximum housing benefit.

Any equivalent loss of benefits income may be paid by the local authority as additional section 23C payments to the provider, at its discretion.

#### **4.20 Impact on benefits of the provision of Meals/Food**

Where meals/food are not provided as part of the "Staying Put" arrangement, the level of Housing Benefit will be based on the Local Housing Allowance (LHA) rates as described in paragraph 8(f) above. All non-section 23C payments regardless of their source will be counted as income under the "Income from sub-tenants" rules. The first £20 per sub-tenant is disregarded. Children Service may make a disregarded compensatory payment from Section 23C which would negate the loss of the provider's benefits.

Where meals/food are provided in the "Staying Put" arrangement, all non-section 23C payments regardless of their source, contributions from the young person, including Housing Benefit will be counted as income to determine the impact on the provider's own benefit claim which may result in a moderate deduction.

A compensatory payment under section 23C may be paid at the discretion of the local authority to offset this loss, again, disregarded for the purposes of assessing benefits.

#### **4.21 Housing Benefit and non-dependant deductions**

A "non-dependant" is someone aged 18+ years who normally lives in a household on a non-commercial basis.

Care leavers who earn income from employment will be classified as non-dependant within a "Staying Put" arrangement. This applies even if the arrangement is with a former kinship foster carer and the full cost is covered by section 23C and the young person neither claims housing benefit nor make contributions to the "Staying Put" arrangement. Consequently, non-dependant deductions will apply to the carers' housing benefit, should they be claiming. Non-dependant deductions will generally not apply to "Staying Put" providers housing benefit claims if the young people are in receipt of Income Support, income-based JSA and ESA.

The Universal Credit Regulations 2013, Schedule 4, Part 3, Paragraph 14 introduced a flat rate for non-deductions or Housing Cost Contributions for all over 21 years old, with some exceptions. Non-dependant deductions will not apply in respect of anyone under the age of 21, even if they are

working. There will continue to be no deductions where either the Claimant or the non-dependent receive Attendance Allowance or higher rate Disability Living Allowance or Personal Independence Payment. Students over the age of 21 will have to pay a small contribution and will no longer be exempt from Housing Cost Contributions.

#### **4.22 A Summary of how non-commercial and commercial arrangements' impact on the former foster carer's benefits**

Generally payments made for young people by Children's Services under sections 17, 20, 23, 24 and 31 of the Children Act 1989 do not count as income for benefit purposes. If a young person age 18 or over remains with the former foster carer under a non-commercial "Staying Put" scheme (no HB claim and no official contribution from young person), all payments made to the provider from section 23C are disregarded in the assessment of their income if they are in receipt of benefits.

However if the arrangement is commercial (involving HB claim and contributions e.g. meals), the non-section 23C element of the whole payment will not be disregarded; and will be taken into account when the providers benefit is assessed. This arrangement will be assessed using 'Boarder' rules.

#### **4.23 Duration of income disregards**

It is also important to note that benefits disregards under the scheme will cease when the young person first leaves the "Staying Put" arrangement. If a young person returns to a "Staying Put" arrangement the whole section 23C payment and other payments from whatever source including housing benefit will be taken into account in the assessment of the provider's benefit entitlement.

#### **4.24 "Staying Put" providers in receipt of Pension Credit**

There is total disregard of income from the 'Boarder' arrangements for "Staying Put" carers who are over pension credit age (currently rising from 60-65) and in receipt of Pension Credit. Their pension credit or housing benefit will therefore not be affected. Also in this circumstance, non-dependant deductions should not apply to 'Boarder' arrangements.

#### **4.25 "Staying Put" providers NOT claiming means-tested benefits**

Generally "Staying Put" arrangements involving providers who are not in receipt of any means-tested benefits will be under a commercial arrangement. The young person claims housing benefit as a contribution towards the "Staying Put" arrangement for the rent element. Since this is a commercial arrangement, the "Staying Put" carer will receive part of the payment under section 23C and the remaining elements will come from the young person's housing benefit and or contributions from wages.

Housing benefit may be set up by DWP to go directly to the provider but if otherwise, the housing benefit will be reimbursed to Children's Services (third party).

#### **4.26 Income Tax and National Insurance Implications for former foster carers**

"Staying Put" providers will be covered under the HMRC Qualifying Care Relief (Shared Lives Carers) allowances if they provide a "Staying Put" arrangement for a young person who is looked after immediately prior to the young person's 18th birthday. Qualifying Care Relief can continue until the young person reaches the age of 21 or, if later, until they complete a programme of education or training. This scheme extends the income tax and national insurance rules that apply to foster carers to "Staying Put" providers. Foster carers and "Staying Put" providers have an income tax free allowance which consist of 2 elements; a fixed amount per household per year, and an additional amount per week per child (£200-£250 in 2013-2014) or adult (£250 in 2013-2014). The Qualifying Care Relief allowance allows the foster carer and/or "Staying Put" provider to earn up to £10,000 (in 2013-2014) without paying Income Tax or Class 4 National Insurance Contributions on their income from caring. The £10,000 per year applies per household regardless of how many foster children or "Staying Put" young people are placed. the additional amount applies per child or young person, per week.

The tax free allowance is only available to households with three or fewer placements. However, foster care placements are excluded for this purpose, and sibling groups are counted as one placement. In practice HMRC will treat the taxable profit from foster care or "Staying Put" care as earnings from self-employment for National Insurance Contributions purposes. Foster carers and "Staying Put" providers are advised to consult their local HMRC office for individual advice and guidance relevant to their personal circumstances and liabilities.

#### **4.27 Working Tax Credit**

"Staying Put" providers as well as foster carers may be able to claim Working Tax Credits which are administered by HMRC. Fostering/"Staying Put" is counted as work for Working Tax Credit purposes. The carer's taxable income is included in the total household income that is used to assess the amount of tax credits that they are entitled to. So, where the carer is paid less than their tax free allowance, their income from caring for tax credits purposes is also nil. Foster carers and "Staying Put" providers need to register as self-employed and for Class 2 National Insurance Contributions, even if they make little or no taxable profit. Foster care and "Staying Put" is classed as self-employment. All self-employed people aged 16 and over who are below State Pension age are liable and must register to pay Class 2 National Insurance Contributions. "Staying Put"

providers should be aware that a failure to register may affect their entitlement to Employment and Support Allowance, Maternity Benefit, State Pension and Bereavement Benefit.

Self-employed foster carers and “Staying Put” providers may be able to apply for Carers Credits which have replaced Home Responsibilities Protection, and those with low taxable profits may be able to apply for a Small Earnings Exemption. Carers can obtain further information and details on all tax issues by calling the Newly Self-employed Helpline on 0845 915 4515.

#### **4.28 Lodgers - Rent-a-Room Scheme**

If the “Shared Lives Arrangements” do not apply, the arrangement will not be under the “Staying Put” scheme. It may instead be an arrangement under standard boarder or sub-tenant contract. In this circumstance, the “Rent a Room” rules or the normal tax rules will apply.

#### **4.29 Rent-a-Room, the Normal Tax Rules and Supported Lodgings**

The Rent-a-Room scheme applies to owner occupiers and tenants who receive rent from letting furnished accommodation in their only or main home and may be used by people providing supported lodgings if they meet the rules of the scheme. The scheme sets out that “if gross receipts (before expenses and including any amounts received for meals, goods and services provided, such as cleaning or laundry) and any balancing charges (in relation to past Capital Allowances) do not exceed £4,250 the provider will be exempt from Income Tax”. Providers can however, opt out of Rent a Room, and may want to do this if they have made a loss.

HM Revenue and Customs Helpsheet HS223 sets out information about the rent a room Income Tax framework:

<http://www.hmrc.gov.uk/helpsheet/hs223.pdf>

#### **4.30 Staying Put and Vacation Accommodation**

Young people who have left former foster care to start university and to live in halls of residence or private rented accommodation are not eligible for “Staying Put” arrangements if they only intend to use the former carer’s residence as holiday accommodation. We do not provide vacation accommodation as standard for everyone at university but will consider providing for those who need it especially if their term-time accommodation is not available. It is important to avoid duplication of rent payment during vacation but vacation accommodation will always be considered in cases of genuine need, considering the welfare and circumstances of the young person. Under this duty, the first consideration is to provide suitable accommodation but in which absence, a set payment equivalent to room in a shared dwelling will be made to secure it. “Staying Put” allowance will not apply where it is agreed that a young person may return to the former

carer's during university vacation. This period of subsequent stay will be treated as vacation accommodation paid for at standard vacation accommodation rate.

#### **4.31 Short term pre-university arrangement**

Children's Services may agree a "Staying Put" arrangement for a care leaver to remain with their former foster carer for a short period of no more than 2 months before they start university. During this period, the standard fostering allowances will be paid to the former foster carer under 23C. However should the period be more than 2 months before the official start date of university programme, the young person will be expected to claim relevant benefits and this will be a "Staying Put" arrangement with all the implications for the provider as stated in this document.