

WIRRAL COUNCIL

CABINET

17TH MARCH 2011

SUBJECT:	FINANCIAL SUPPORT SPECIAL GUARDIANSHIP AND RESIDENCE ORDERS
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF CHILDREN'S SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR SHEILA CLARKE
KEY DECISION	NO

1.0 EXECUTIVE SUMMARY

- 1.1 This report provides members with an update on the financial support being provided to Special Guardians following the report provided in March 2010 and provides details of a revised policy for financial support for Special Guardianship and Assisted Residence Orders. The revised policy ensures that financial support is provided only to those families that would be unable to care for the child without such support and complies with the Council's legal requirements under the Children Act 1989, the Adoption and Children Act 2002 and the Special Guardianship Regulations 2005.

2.0 RECOMMENDATION/S

- 2.1 The Council agrees to implement the policy for financial support for Special Guardianship and Assisted Residence Orders as outlined in this report from 1st April 2011.
- 2.1 A further report will be made available on a policy for financial support to adopters and potential adopters.

3.0 REASON/S FOR RECOMMENDATION/S

- 3.1 A happened elsewhere the Council faced legal challenges to its existing policy for financial support to Special Guardians in March 2010 through applications for Judicial Review. The legal issues have been subsequently clarified and tested out over the last 12 months. As a result a revised policy has been drafted for approval (see Appendix 1).

4.0 BACKGROUND AND KEY ISSUES

Special Guardianships

- 4.1 Special Guardianship Orders came into force from 30th December 2005 which provided a new permanence option for children who are unable to grow up with their birth parents.

- 4.2 A Special Guardianship Order gives the Special Guardian legal parental responsibility for the child which is expected to last until the child is 18. But unlike Adoption Orders, these Orders, do not remove parental responsibility although their ability to exercise it is extremely limited.
- 4.3 The local authority has the responsibility for investigating and preparing a report to court about the suitability of applicants to be special guardians. In addition the local authority has responsibility for making arrangements for the provision of support services, including financial support, to meet the needs of people affected by special guardianship.
- 4.4 Initially most applicants for special guardians have been family and friends foster carers for children who were in the care of the local authority, called 'public law applicants'. The granting of a Special Guardianship Order in these cases means the child is no longer the responsibility of the local authority and the Special Guardian has clear responsibility for day to day decisions about caring for the child or young person. The local authority ensures that financial reasons do not deter foster carers applying for special guardianships by continuing to provide financial support equivalent to the fostering allowance but deducting an amount equivalent to less child benefit. The child benefit is deducted as Special Guardians were previously unable to claim child benefit and child tax credit as foster carers but are able to claim these benefits once the Special Guardianship Order is awarded.
- 4.5 More recently there have been a larger number of applicants for special guardians where the child is not in the care of the local authority, called 'private law applicants'. There have been a number of challenges locally and regionally to the level of support provided by local authorities in such 'private law applicants'.
- 4.6 A report was provided to Cabinet on 18th March 2010 (see Appendix 2) which detailed the legal advice regarding the criteria previously used to decide whether applicants were eligible for financial support and the requirement to carry out a full financial assessment of all applicants for financial support rather than using the means test based on that recommended by the DCSF. The Cabinet resolved that: *"in advance of a policy being agreed, the Director of Children's Services be authorised to agree financial support for Special Guardianship in accordance with the Special Guardianship Regulations (2005) and in line with the advice of the Director of Law, HR and Asset Management"*.
- 4.7 Since that time the local authority has not used the means test for calculating the level of financial support to be provided to special guardians and potential special guardians. Instead where it has been determined that financial support is to be considered a full financial assessment of the person's circumstances has been undertaken rather than a formula based calculation. Such a full assessment is more in accordance with Regulation 13 of the Special Guardianship Regulations 2005 and allows for greater flexibility to ensure the particular needs of the individual child can be supported. Further details of the eligibility and assessment process are contained in the draft policy attached in Appendix 1.

- 4.8 The full financial assessment is undertaken by an officer of the council with expertise in financial assessments in conjunction with the allocated social worker according to Regulation 13 of the Special Guardianship Regulations 2005. The full financial assessment takes into account the person's financial resources, their reasonable outgoings and commitments and the financial needs and resources of the child including any tax credit or benefit which would be available to the potential special guardian if the child lived with them.
- 4.9 All applications for financial support are considered by a Permanency Panel (see appendix 1 for details of the panel) along with the suitability of the carers to be special guardians for the child and any additional support needs. The panel considers the detail of the financial assessment and makes a recommendation on the level of financial support that is required. The support can be as a lump sum for start up costs, a series of one off payments or periodic payments. All decisions for financial support are made by the Head of Branch, Children's Social Care based on the recommendations of the Panel. The applicants have 28 days to appeal any decision which is proposed in the policy that this should be made to the Director of Children's Service.
- 4.10 The amount of financial support awarded is not generally based on the fostering allowance; except for former foster carers where it is determined they should not be at any financial detriment by becoming special guardians. Where the special guardian was receiving fostering allowance for the child, as an approved foster carer, immediately prior to the Order they continue to receive the skills fee (element of remuneration) paid for that child prior to the order for 2 years following the order. The skills fee will generally cease after 2 years unless there are exceptional reasons for this to continue.
- 4.11 Following the introduction of the full financial assessment rather than the previous use of the means test the previous challenges through Judicial Review have been withdrawn and applicants for Special Guardians have been generally happy with the outcome of the financial assessment.
- 4.12 Any financial support that is provided as periodic payments must be subject to an annual review. In the past this would have been done using the means test following the special guardians providing full information of their financial circumstances. It is proposed that in the future that a full financial assessment will only be undertaken when there are any significant changes in the circumstances of the family and/or child. The annual review will require the special guardians to confirm their eligibility for financial support, a summary of their financial circumstances, and any significant changes since the last review. There will be no assumption of an annual increase in line with inflation except for those whose financial support based on the fostering allowance when these will be increased each year in accordance with any increase in the fostering allowance.
- 4.13 The majority of existing special guardians that were former foster carers are receiving financial support based on the fostering allowance with holidays, Christmas, a Birthday payments consolidated into the weekly allowance, called special guardianship allowance. They will have agreed with the local authority

to apply for special guardianships on the basis that the full special guardianship allowance would be paid for 2 years and would then be subject to a means test. It is proposed that all existing special guardians should be subject to the annual review as detailed above.

Residence Orders

- 4.14 A Residence Order confers parental responsibility to the person with the Residence Order which will be held jointly with the birth parents. On the making of a Residence Order any care order will be discharged and the child will no longer be in the care of the local authority. Local authorities may make contributions to a person with Residence Order towards the cost of the accommodation and maintenance of the child, according to Schedule 1, para 15 of Children Act 1989. Since the introduction of Special Guardianship Orders the courts have promoted Special Guardianships in preference to Residence Orders where family and friends are applying to permanently care for a child. However there are still circumstances where Residence Orders are more appropriate, for example if the birth parents may resume care of the child at some point in the future. There may be situations where the local authority would wish to provide some financial support to the carers with a Residence Order to ensure they are able to provide for the child's needs and the method for assessment and eligibility needs to be consistent with the policy for Special Guardianship. It is therefore proposed that the policy for Assisted Residence Orders is changed in accordance with this policy and a full financial assessment undertaken. (see appendix 1)
- 4.15 Prior to the introduction of Special Guardianships in 2006, the local authority encouraged family and friend foster carers to apply for Assisted Residence Orders (see cabinet report 21st April 2004). For a period from 2004 to 2008, with the implementation of the previous financial support policy, all former foster carers applying for assisted residence orders would have received an Assisted Residence Order allowance until the child reached 16 years of age, or until they are 18 if they are in full time education. Following the implementation of the previous financial support policy in 2008 any new applicants for residence orders would have been assessed for financial support on the basis of the DCSF means test. It is proposed that any existing arrangements continue and the annual review process will be as detailed above for special guardianships.

Adoption support

- 4.16 The local authority also has responsibility for providing financial support for adopters and prospective adopters. The assessment for support for adoption is currently undertaken using the DCSF recommended means test and in accordance with the Cabinet decision of June 2008. Whilst it would be appropriate to have a policy in place that is consistent with that for special guardianship and assisted residence orders the circumstances around adoption have a number of differences. For example all the children will have been previously looked after and may have particular needs associated with their history, the potential adopters are not mainly relative carers (grandparents), and the children are not known to them prior to introductions and when the

initial financial assessment is undertaken it will be difficult to assess the financial needs of the adopted child. It is therefore proposed that a report is provided in the future when further consultation has taken place with relevant staff and adopters to enable an appropriate policy to be written that meets the needs of adopters and their families.

5.0 RELEVANT RISKS

- 5.1 Any change in the policy for financial support creates a risk that friends and family may be more reluctant to become special guardians for children that are unable to have a permanent home with birth parents and thus increase the number of children in the care of the local authority. This will be addressed through briefing the new policy to staff, foster carers and grandparent groups to explain how the policy will affect them.
- 5.2 There will continue to be risks of legal challenge from potential special guardians to the decision on the financial support. However the local authority has obtained its own legal advice which considers the new policy to be more flexible and less liable to legal challenge.

6.0 OTHER OPTIONS CONSIDERED

- 6.1 The local authority could continue to use the DCSF model means test for all special guardianship applicants. However this would result in considerable additional cost to the local authority as most carers applying for special guardians would be eligible to receive the equivalent of the full fostering allowance less child benefit.

7.0 CONSULTATION

- 7.1 The consultation has been limited to the relevant staff associated with the implementation of post special guardianship support. However the new policy has been in operation since March 2010 and there has been generally positive feedback from applicants for financial support. The Council Legal Services have also been consulted about this revised policy.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 8.1 A clearer, consistent policy for financial support will assist those organisations providing advice and information to potential carers such as grandparent groups.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 9.1 This change in policy means that the eligibility for financial support is tighter; it is based on individual need and is not based on a formula based means test. Previously most special guardians and those the local authority were supporting in residence orders would receive the full allowance based on the fostering allowance. According to this policy both the number receiving any ongoing payments will be reduced and the amount of the periodic payments will be reduced.

9.2 A clearer and consistently implemented financial support policy will assist in encouraging carers to become special guardians and hence reducing the number of children in care. This will reduce the staff time in carrying out statutory visits and reduce the costs of paying the fostering allowance to foster carers.

10.0 LEGAL IMPLICATIONS

10.1 This policy ensures that local authority is compliant with the requirements of the Special Guardianship regulations (2005) in relation to the circumstances in which financial support may be paid (Regulation 6), the amount that can be paid (Regulation 13) and the remuneration payable to former foster carers (Regulation 7).

11.0 EQUALITIES IMPLICATIONS

11.1 The revised policy provides increased flexibility so that the individual needs of families can be resourced. Monitoring through the Permanency Panel will ensure that any financial support is provided fairly.

11.2 Equality Impact Assessment (EIA)

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|---------------------------------------|--------------------------------------|
| (a) Is an EIA required? | Yes |
| (b) If 'yes', has one been completed? | Yes (21 st February 2011) |

12.0 CARBON REDUCTION IMPLICATIONS

12.1 There are no carbon reduction implications in relation to this report.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 Supporting carers to become Special Guardians and providing a stable permanent home for children and young people that are not able to stay with their birth parents will make it more likely that the young people concerned will become good citizens.

13.2 There are no planning implications.

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APPENDICES

Appendix 1: Policy on financial support for Special Guardianship and Assisted Residence Orders

Appendix 2: Cabinet report 18th March 2010 and decisions.

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	18th March 2010
Cabinet	12th June 2008