

WIRRAL COUNCIL

CABINET – 18 MARCH 2010

REPORT OF THE DIRECTOR OF CHILDREN'S SERVICES

SPECIAL GUARDIANSHIP

Executive Summary

This report is to update members on the policy changes required in relation to Special Guardianship during 2009/10. This report contains proposals for an interim policy in response to challenges against the Council's current policy brought by way of ongoing applications for Judicial Review by two Special Guardians. The report outlines the background in relation to Special Guardianship and current policy agreed by Cabinet in November 2006 and developments that have led to a need to make amendments to the policy.

1. Background

- 1.1 The Adoption and Children Act 2002 introduced a completely new court order, Special Guardianship, intended to provide another option for legal permanence for children who cannot grow up with their birth families.
- 1.2 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 from the child's birth parents, although their ability to exercise it is extremely limited.
- 1.3 If the child was formerly in the care of the Local Authority, the granting of a Special Guardianship Order means that the child is no longer the responsibility of the Local Authority. The Special Guardian will have a clear responsibility for all day to day decisions about caring for the child or young person, and for taking important decisions about their upbringing, for example their education. Although importantly, birth parents retain their legal parental responsibility, the Special Guardian only has to consult with them about these decisions in exceptional circumstances.
- 1.4 The group of young people the new order was seeking to provide permanence for was young people placed in long term Local Authority foster care.
- 1.5 However the national trend is for more relative carers and younger children to be the significant group that Special Guardianship Orders are applied to.
- 1.6 In Wirral due to the focus of a Project Team and the Merseyside Family Courts embracing the legislation, there has been considerable success in securing permanent placements for looked after children with little evidence of disrupted placements.

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- 1.7 A growing area of activity is an increasing number of private applications made by families directly to the Court; both locally and regionally there have been challenges about the level of support Local Authorities should provide in such cases.
- 1.8 Since the policy was agreed by Cabinet, a Permanency Panel was set up in April 2009. This has been an important development to ensure consistent application of Wirral's policy and the relevant regulations and in determining the Councils response to legal challenges and approaches made by prospective Special Guardians to the Local Government Ombudsman. The panel comprises social workers, an Independent Reviewing Officer who is responsible for reviewing foster carers, a policy and financial advisor, the Looked After Children's Service Manager, and is chaired by the Strategic Service Manager for Children's Resources. Where there are significant legal issues to consider, representation is also provided from the Borough Solicitor. The Panel is attended by the social worker who presents reports in advance for reading by Panel members. The Panel considers both the suitability of the applicants and that of the support plan. The Panel then makes recommendations to the Head of Branch Children's Social Care. All decisions about financial support are made by the Head of Branch, Children's Social Care, following a recommendation made by the Permanency Panel. There is a 28 day period in which the applicant can appeal the decision, and it is proposed in future that this appeal is considered by the Director of Children's Services.

2. Financial support for Special Guardians

- 2.1 A Cabinet Report of 15th November 2006 agreed the policy for local authority financial support for Special Guardians. This was followed on 12th June 2008 with a report that extended the policy to cover the financial support to Adopters, Special Guardians and carers with Residence Orders. This ensured consistency in the allocation of financial support across all forms of permanent care. The policy detailed the eligibility criteria for financial support and the financial assessment (means test) that would be applied. The means test is based on that recommended by the DCSF. In addition to the criteria that are in accordance with Regulation 6 of the Special Guardianship Regulations 2005, the original policy said that:-

"financial support will be considered only after an assessment has taken place, and the child was looked after immediately prior to the order, or the child is in need".

- 2.2 Legal advice from within various local authorities, including Wirral, is that such criteria cannot be used as part of the consideration for financial support. The current practice is therefore to consider each applicant for financial support against the circumstances as detailed in the relevant regulations. The policies and procedures for 'Special Guardianship Orders' and the 'Financial Support to Adopters, Special Guardians and carers with Residence Orders' therefore require amendment to reflect the current practice.
- 2.5 Regulation 7 of the Special Guardianship Regulations (2005) states that former foster carers can continue to receive the remuneration element of any financial support paid to them prior to the making of the Special Guardianship Order for up to the first two years of the Special Guardianship Order, to allow a period of transition. This relates to the professional fee paid to former non relative foster carers and not the basic fostering

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allowance which is paid to all foster carers regardless of whether they are family and friends. However, many foster carers have been reluctant to commit to making an application for Special Guardianship Order, if the basic fostering allowance is not guaranteed for at least 2 years. Advice from Department of Children's Schools and Families (DCSF) has been sought on the issue and they advise that there may not be a problem with making continuing payment of allowances, provided they are considered to be necessary for the purposes set out in the Regulations and that our own legal advice should be sought.

Our own legal advice is that Regulation 6 sets out the circumstances in which financial support may be paid to a Special Guardian or prospective Special Guardian. Financial support paid under these Regulations cannot duplicate any other payment available to the Special Guardian, and Regulation 13 provides that in determining the amount of any financial support, the Local Authority must take account of any other grant, benefit, allowance or resource which is available to the person in respect of their needs as a result of becoming a Special Guardian of the child.

The professional judgement which has informed the current policy is based on the fact that we have high numbers of children in care, many of whom are in long term settled placements. Furthermore, if the continued payment of allowances was not guaranteed for 2 years, before the means test was applied this could act as a deterrent to children achieving permanence, as many foster carers indicated they would not proceed to make an application for Special Guardianship, without this guarantee. Consequently, the current policy provides for the continued payment of an amount equivalent to the fostering allowance, minus child benefit, irrespective of the outcome of the means test because it provides a level of financial security for all former foster carers for the first two years, with each case then being regularly reviewed on its own particular merits. This has allowed Wirral to provide a financial package for carers of children in long term settled placements to facilitate the making of Special Guardianship Orders.

In the light of the legal advice however, the policy needs to be amended to comply fully with the Special Guardianship Regulations (2005). Entitlement to financial support under the Regulations is not automatic and therefore all applicants' circumstances must be considered and assessed against Regulation 6, and a financial assessment under Regulation 13. This will apply to all prospective and current Special Guardians, including foster carers and former foster carers.

- 2.6 There has been a growing amount of complex work in assessing Special Guardianship applicants' financial circumstances. The Local Authority has a responsibility to ensure that financial issues are not an obstacle to Special Guardianships arrangements continuing.
- 2.7 The interim policy will be kept under review, particularly in light of the current challenges that the Council faces. The intention is to update the Cabinet on developments in the Judicial Review proceedings as necessary and present a policy for approval after the Court has given its judgement, if it does not prove possible to resolve matters by way of negotiation.

3. Post Special Guardianship Support

- 3.1 The Regulations for provision of post Special Guardianship Support are similar to those governing Post Adoption support. In relation to both areas there is increasing demand for services. On June 15 2009 the Employment and Appointment Committee agreed to establish the former Project Team posts on a long term basis to provide these services of Post Adoption and Special Guardianship support. The assessment and provision of financial support for both Orders must be within the same framework and policy.
- 3.2 The team are at an early stage of development but work has already begun in looking at how the service needs to be developed, in particular through consultation with Special Guardians. There will be a strong emphasis on applying strategies that have worked well in the Adoption service which is why the team has been located in the Adoption and Permanence service.

4. Financial implications

- 4.1 There are none arising from this report.

5. Staffing implications

- 5.1 There are none arising from this report.

6. Equal Opportunities Implications/Health Impact Assessment

- 6.1 Special Guardians may come from all parts of Wirral and may meet the needs of a range of children's needs. An equality impact assessment was carried out on the current policy. The proposed policy is an interim policy and does ensure greater equality as the same regulations will apply in full to all applicants.

7. Community safety implications

- 7.1 The assessment and support for Special Guardians ensures that children are provided with safe alternative carers.

8. Local Agenda 21 implications

- 8.1 There are none arising from this report.

9. Planning implications

- 9.1 There are none arising from this report.

10. Anti-poverty implications

- 10.1 The assessment for support and identification of support plans for Special Guardians ensures that they are able to meet the needs of children in their care.

11. Social inclusion implications

- 11.1 Special Guardianship provides the opportunity for stable and permanent care for children who cannot live with their natural parents

12. Local Member Support implications

- 12.1 There are none arising from this report.

13. Background Papers

- Special Guardianship Regulations 2005
- Adoption and Children Act 2002

RECOMMENDATIONS

That:

The Council agrees to this interim policy in the light of recent developments nationally and regionally.

Howard Cooper
Director of Children's Services

DECISION DETAILS

Special Guardianship

Decision Maker: Cabinet, Cabinet Briefing

Decision Type: Non-Key

Decision Status: Awaiting Implementation

Is Key decision?: No

Is subject to Call In?: Yes

Decisions:

A report by the Director of Children's Services served to update Members on the policy changes required in relation to Special Guardianship during 2009/10. The report contained proposals for an interim policy in response to challenges against the Council's current policy, brought by way of ongoing applications for Judicial Review by two Special Guardians. The report also outlined the background in relation to Special Guardianship and current policy agreed by the Cabinet in November 2006 and subsequent developments that had led to a need to make amendments to the policy.

RESOLVED: That

- (1) a revised policy be prepared in line with the principles set out in the report and it be presented to the Cabinet as soon as the legal issues are clarified; and**
- (2) in the interim and in advance of such a policy being agreed, the Director of Children's Services be authorised to agree financial support for Special Guardian in accordance with the Special Guardianship Regulations (2005) and in line with the advice of the Director of Law, HR and Asset Management.**

Report Author: Interim Director of Children's Services

Publication Date: 31/03/2010

Date of Decision: 18/03/2010

Decided at Meeting: [18/03/2010 - Cabinet](#)

Effective from: 10/04/2010

Accompanying Documents:

- [Special Guardianship Report](#) PDF 100 KB