

**TO: Executive Member for Children, Young People and Learning
10 February 2016**

**APPROVAL OF THE UPDATED POLICY, PROCEDURE AND GUIDANCE NOTES IN
RELATION TO SPECIAL GUARDIANSHIP AND ADOPTION**

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1 PURPOSE OF REPORT

- 1.1 This report has three purposes. The first is to update the Special Guardianship Policy and Procedure taking into account the updated legislation of Children and Families Act 2014. The second is to consider changes to the guidance around financial assessments for those requesting an allowance under Special Guardianship or Adoption Orders and who have savings, investments and equity held within a second property which are of greater value than £100,000. Thirdly, there is a proposal to amend the policy to include foster carers who may wish to offer children permanency through Adoption or Special Guardianship but where financial support can be a potential barrier.
- 1.2 This is the primary document available to those making applications for Special Guardianship Order and therefore the document now provides greater information around eligibility and criteria.

RECOMMENDATION

- 2.1 To agree the revised Adoption Allowances Financial Assessment Guidance Notes [Appendix 1], Special Guardianship Policy and Procedure 2015 [Appendix 2] and agreed the newly written Special Guardianship Financial Assessment Guidance Notes [Appendix 3].
- 2.2 This includes updating the policy with new information around Child Arrangement Orders (which have replaced Residence Orders), Staying Put provisions and a change in terms of how financial support is calculated for those applicants with savings, investments or equity in a second property above £100,000.
- 2.3 It is recognised that this is the policy that applicants are provided with when considering providing legal permanence for children and therefore has been updated to reflect the definitions of Special Guardianship and compares this with other types of legal permanence. It is intended that this document enables families to make an informed decision on whether becoming Special Guardians for a specific child is appropriate for them.

3 REASONS FOR RECOMMENDATION

- 3.1 To ensure up to date, fair and cost effective policies and procedures are in place.
- 3.2 The Special Guardianship Policy and Procedure has been updated to provide greater clarity as to who can apply for a Special Guardianship Order and in what circumstances. Special Guardianship is a form of legal permanence for children and it is imperative that any potential substitute carers are given clear information at the

earliest stage possible. The policy also outlines the criteria that those wishing to apply to be Special Guardians should satisfy and the timeframes. This is based on the regulatory requirements relating to Special Guardianship.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 In relation to updating the Policy to reflect the legislation, this appears to be the only appropriate option to provide current and accurate information to applicants.
- 4.2 Regarding the changes to take savings and equity in a second home into account, alternatives could include refusing an allowance in all instances where savings, investments and equity are above a certain threshold. However, as these are not currently yielding any regular income this could potentially be open to challenge.
- 4.3 Foster carers who are considering providing legal permanence through Special Guardianship or Adoption would benefit from an open and transparent approach whereby they are aware of what they and the child are eligible for should they be assessed for a Special Guardianship Order or Adoption Order. The alternative, given the small cohort could be that requests are made to the relevant officer via the Head of Service on a case by case basis and there is discretion within the policy to allow this. However, not having clear criteria within the policy could potentially lead to inconsistency and some delays in achieving legal permanence for children. Additionally, feedback from foster carers is that they would appreciate information being contained within a policy as there would be a concern that if officers were to leave the department then agreements may not be honoured.

5 SUPPORTING INFORMATION

5.1 Legislative and procedural changes

The Special Guardianship Order is now widely used within care proceedings and over the past 2 years the granting of these has increased significantly with 9 Special Guardianship Orders being made in 2014/15 compared to 2 in 2012/13. In fact, the making of these orders now outweighs the granting of Adoption Orders within the family court. The increase is most stark in relation to younger children who historically may have been considered for Adoption. Given this increase it is imperative that our policy does not factor in delays. Unlike matches between adopters and children, there is no regulatory requirement for Special Guardians to be either approved or matched to children at Adoption/Fostering Panel. The policy previously made provision for the recommendation regarding Special Guardians to be made by the Agency Decision Maker following a recommendation at Fostering Panel. This has now been removed to reflect that this does not take place as there is judicial oversight of this matching process and having a panel would merely duplicate this process. In addition, the assessment of Special Guardians often takes place within care proceedings which are required to be concluded within 26 weeks. The regulations make provision for the assessment to take 12 weeks for completion so factoring in a panel meeting is likely to cause unnecessary delay within the care proceedings and for children being able to live with their permanent carers.

- 5.2 The Children and Families Act 2014 introduced the Child Arrangement Order which has replaced the Residence Order and the policy now reflects this update. The policy sets out the differences between Child Arrangement Order, Adoption Order and Special Guardianship Order in terms of the duration of the Order, the limits in

exercising Parental Responsibility and financial allowances and ensures that the Local Authority is being transparent. There is also provision for families offering to provide permanent care for children to have a one off, independent legal consultation to identify the most appropriate order to secure legal permanence for a child. This would be financed by the Local Authority.

5.3 Staying Put was also introduced under the Children and Families Act 2014 and this enables vulnerable children who are looked after to be considered to remain with their foster carers beyond the age of 18 years. Children who are the subject of a Special Guardianship Order are no longer Looked After and therefore are not eligible for Staying Put services but any discretionary allowance could continue until they are 19 years old if they remain in full time education and this is now included in the policy.

5.4 **Changes to take into account savings and assets**

The regulations in relation to Special Guardianship and Adoption place a duty on the local authority to assess the financial circumstances of those applying to provide legal permanence to children under the auspices of a Special Guardianship or Adoption Orders. The orders granted by the courts last until the children are adults and therefore applicants must satisfy the Local Authority that they are financially stable. Criteria within the regulations sets out circumstances when an allowance may be payable. In all circumstances, when an allowance could be payable, applicants must complete a financial means test. The means test calculates the total income of the family as well as outgoings to calculate whether families are eligible or not eligible, they are required to provide proof of income and outgoings.

5.5 The Local Authority uses the standardised Department for Education means test to calculate whether applicants requesting a financial allowance in relation to Special Guardianship or Adoption are eligible. The means test calculates eligibility based upon income and expenditure but does not take into account saving or assets that do not yield a regular income. There has previously been a question asking if the applicants have savings of more than £100,000. Following this, the allowance is then considered by the Chief Officer for Children's Social Care. Applicants may therefore be eligible for an allowance using the means test even if they have savings well above £100,000. This raises concerns as these applicants do not require the financial support of the local authority but it will be provided in any event. The local authority may be open to legal challenge if the decision is made not to provide them with an allowance if they have savings above £100,000 even though they are assessed as eligible using the means test. Therefore, a suggested solution within the draft policy is that all those with savings of £100,000 or more and, who are eligible using the means test, will not automatically be refused an allowance by the Chief Officer. Instead, those with savings of £100, 000 or more who are granted an allowance will be required to have their allowance reduced by £5 per £1,000 over the £100,000 of their savings, equity in a second home or shares. Therefore, their allowance will not be reduced for the first £100,000 but for every £1,000 above this their allowance will be reduced. Having a sliding scale whereby the allowance is reduced as opposed to not providing an allowance for those with savings or assets above £100,000, would appear to be fairer and less likely to result in the Local Authority being challenged.

5.6 Using the table at 5.14 the maximum allowance that is payable would be £266.86 per week. This will mean that applicants requesting an allowance would need to have savings or equity in a second property of around £150,000 in order to receive no allowance.

- 5.7 The number of applicants who have declared savings of this amount is small and likely to be one or two per year. It is unlikely that this will put people off wanting to provide permanent care to children as they will already have the means to care for the children without financial contribution. The value of the property that the family are living in will not be considered within this £100,000 and only applicable in a second or subsequent property.
- 5.8 Applicants can request a reassessment of their financial circumstances and any time and should their circumstances change and they no longer have these savings or equity in a second property and they are deemed as eligible following the means test then an allowance may be payable.

5.9 Foster carers applying for SGO/Adoption

All children Looked After by Bracknell Forest have plans for permanency. Where a child cannot grow up within their birth family permanency can be achieved through the making of either an Adoption or Special Guardianship Order. For a small number of Looked After Children, at most three a year, permanency is best achieved by remaining with their current foster carers.

- 5.10 For some foster carers, their financial circumstances are such that they are able to care for a child and accept the reduction in allowance; however for a very few carers, the change in payment can make a significant difference to the household income and become a barrier to progressing a plan for Adoption or Special Guardianship. Other barriers to the seeking of an order by foster carers, especially Special Guardianship, is in the form of eligibility to grants available to Looked After Children who remain in the care system post 18 years, under The Leaving Care Act 2000. Foster carers would want to ensure that children do not miss out on the opportunity to attend university as a result of no longer being looked after. Children receive bursaries to support university costs which are not routinely available to children subject to a Special Guardianship Order.
- 5.11 Currently when foster carers apply to either Adopt or seek Special Guardianship, Bracknell Forest Council continues to pay an allowance based on the fostering rates for two years. Following this, any further allowances need to be subject to a financial assessment and paid at the discretion of the Director CYP&L or Chief Officer for Children's Social Care. This can often be a barrier to carers seeking to apply for one of these Orders.
- 5.12 The changes proposed will allow, in exceptional cases, the Director CYP&L or the Chief Officer for Children's Social Care, to decide to continue to pay the foster carer allowance rate beyond the current two years as set out in the policy, which can be agreed at the time of 'matching' and paid until a child reached 18 years of age. Similarly a further barrier to foster carers applying for this form of permanence has been that previously a child under these orders cannot apply for Bursary entitlements previously available to them as former Looked After Children to support them to attend University under the Leaving care Act 2000. Given that any allowances paid for Adoption and Special Guardianship would cease at 18 years of age, this leaving care bursary cost of £2,000 (which not all children would be eligible if did not attend university) as a one off payment would be small in comparison to overall costs for Care Leavers e.g. Staying Put (SP) costs would not apply to Adoption or Special Guardianship.

5.13 Financial impact of change of policy

Unrestricted

Following the granting of a Special Guardianship or Adoption Order, foster carers would continue to receive the same level of financial income as they received as foster carers for two years post order, which includes the Market Supplement. After two years this Market Supplement stops and foster carers receive the age-related allowances for children. Any allowance received takes into account the financial assessment of other benefits such as Child Benefit and Tax credits or other payments available, and an annual financial assessment would still continue. Previous Looked After children are also eligible to receive the Pupil Premium allowance provided by schools.

- 5.14 The difference in cost per year varies according to the age of the child. The chart below demonstrates that the difference between current fostering allowances and Special Guardianship Order rates.

	Annual Fostering Rates	Annual SGO Rates	Adoption Allowance Standard Rates
0-4	£12,448	£8,044	£5,333
5-10	£13,607	£9,163	£6,075
11-15	£18,988	£11,407	£7,562
16+	£19,367	£13,877	£9,200

NOTE: The above does not include the mandatory deduction for child benefit for the SGO and Adoption Allowances

- 5.15 As the potential reduction in income has been sometimes cited as a barrier to taking a Special Guardianship Order or Adoption Order, in reality, the likelihood is that the Council would continue to have to pay the higher fostering allowance, so the financial implications from the change are considered to be relatively small. The granting of a Special Guardianship Order or Adoption Order reduces staff monitoring requirements, including social worker, Independent Reviewing Officer, education support and other administrative duties. These non-cashable savings have been estimated as marginally over £2,500 a year.
- 5.16 With Independent Fostering Agency foster carers, where the care plan is for permanency and it meets the child's needs to remain with their carer, the financial advantage of an Adoption or Special Guardianship Order increases, as the authority no longer pays the additional Agency fees. The same criteria would be used in the decision making process.

5.17 **On going support**

There is a dedicated Social Worker and Family Worker based in the Family Placement Team who provide on-going support to carers who care for children under either of these orders. They are provided with information, support, advice and training to assist them with the care of their children. For some foster carers they may continue in a dual role of fostering and caring for a child under Adoption or Special

Guardianship. They will continue to receive visits from their Supervising Social Worker who can also support them.

- 5.18 Any changes to families' circumstances can result in a request for an assessment of need in line with the child's Adoption or Special Guardianship Support Plan. Following the three year provision under these plans, any child who moves into the Bracknell Forest area under one of these two orders can also seek the same assessment of need.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The main legal issues are addressed within the report and the attached documents.

Borough Treasurer

- 6.2 The Borough Treasurer is satisfied that based on current demand, no significant financial implications arise from this report. Should the number of allowances paid change, this would need to be considered as part of the normal budget setting process.

Equalities Impact Assessment

- 6.3 The policy is based on assessments of need for the individual child or young person and complies with the overarching Equalities Impact Assessment for Looked After Children and Young People.

Strategic Risk Management Issues

- 6.4 Further to advice from the Borough Solicitor and Borough Treasurer to identify any potential issues

7 CONSULTATION

Principal Groups Consulted

- 7.1 Children's Services Management Team

Background Papers

Attached are draft amendments to the following policy documents, which set out proposed changes to current arrangements:

- Adoption Allowance: Financial Guidance Notes (Appendix 1)
- Special Guardianship: Policy and Procedure (Appendix 2)
- Special Guardianship Financial Guidance Notes (Appendix 3)

Contact for further information

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