

Cabinet

16 May 2018

Review of Special Guardianship Policy & Procedure – Assessment, Provision & Review of Support Services



Report of Corporate Management Team Margaret Whellans, Corporate Director of Children & Young People's Service Councillor Olwyn Gunn, Cabinet Portfolio Holder for Children & Young People's Services

Purpose of the Report

- 1 Following the review of the Special Guardianship Policy & Procedures during 2017, this report seeks to provide Cabinet with an overview of the proposed changes and the actions undertaken to ensure the assessed needs of children/young people subject to a Special Guardianship Order are met and there is compliance with the Special Guardianship Regulations 2005.
- 2 In addition, the report also highlights the importance of providing a consistent and timely method of reviewing support and ensuring Special Guardians and children/young people, subject to a Special Guardianship Order, have the appropriate access to a wide range of services and support.

Background

- 3 The Prime Minister's review of adoption in July 2000 identified that there was a significant group of children who did not wish to make the absolute legal break with their birth family that is associated with adoption. The review recognised that long term fostering lacked security and a proper sense of permanence in a family and did not suit all children. The report identified the need for an intermediate legal status between adoption and residence orders, which offered greater legal security for the child, but without absolute legal severance from the child's birth family. In the White Paper "adoption: a new approach" issued in December 2000 the Government committed to creating a new private law order called special guardianship, that would provide legal permanence short of adoption. The White Paper stated, amongst other things, that special guardianship orders would be accompanied by proper access to a full range of support services including, where appropriate, financial support. This clearly recognised that financial support would not be provided to all special guardians.
- 4 The Children Act 1989 was amended by the Adoption and Children Act 2005 to include Special Guardianship Orders into the range of private law orders, which a court can make in respect of a child, either following an application, by a prospective special guardian, or at the conclusion of care proceedings. Section 14F Children Act 1989 places a duty on each local authority to make

arrangements for the provision within their area of special guardianship support services, which means counselling, advice and information and such other services as are prescribed by the Special Guardianship Regulations 2005. The Regulations are supported by Statutory Guidance issued by the Department for Education.

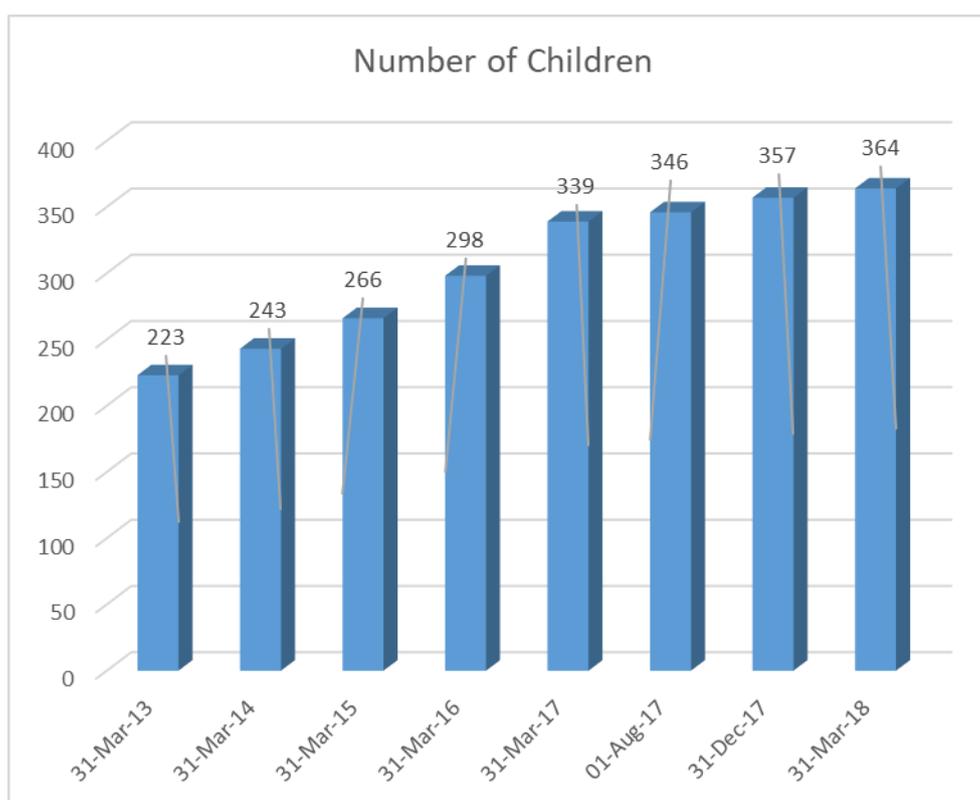
- 5 Children who are made the subject of Special Guardianship Orders are not looked after once the order is made whatever their status throughout the course of care proceedings. Special Guardianship Orders are usually made to family members, many of whom are grandparents.
- 6 Paragraph 37 of the 2017 Statutory Guidance states: *“financial issues should not be the sole reason for a Special Guardianship arrangement failing to survive. The central principle is that financial support should be payable in accordance with the regulations to help secure a suitable Special Guardianship arrangement where such an arrangement cannot be readily made because of a financial obstacle.”*
- 7 Paragraph 65 of the statutory guidance states: *“In determining the amount of any ongoing financial support, the local authority should have regard to the amount of fostering allowance which would have been payable if the child were fostered. The local authority’s core allowance plus any enhancement that would be payable in respect of the particular child, will make up the maximum payment the local authority could consider paying the family. Any means test carried out as appropriate to the circumstances would use this maximum payment as a basis.”* This principle has been firmly reinforced in a number of Local Government Ombudsman’s findings and case law, which confirm that the level of financial support if given must be based on the age-related fostering allowance.
- 8 In addition, whilst local authority foster carers cannot access child benefit or any other benefit, Special Guardians (SGs) are eligible to access all benefits to which they are entitled. Reg 13(2) states that in determining the amount of 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 his needs, as a result of becoming a Special Guardian (SG) of the child. Paragraph 63 states that it is important to ensure that SGs are helped to access benefits to which they are entitled and local authorities should endeavour to ensure that the SG is aware of and taking advantage of all benefits and tax credits available to them. Financial support paid under these Regulations cannot duplicate any other payment available to the SG. Even if the SG would prefer not to claim benefits, the local authority must take into account benefits, which would be available to the SG, if they chose to claim them.
- 9 The authority’s policy is compliant with the above guidance. Any transitional financial support paid to SGs is based on the Fostering Network’s minimum recommended allowances, applying the appropriate means test and enhancements to make adjustments.

Analysis of Special Guardianship Support being provided by DCC

- 10 The total number of children/young people subject to a Special Guardianship Order and receiving financial support has increased year on year and this increase also represents the findings from the Ministry of Justice (2015) who revealed a national increase of 81% in the total number of Special Guardianship Orders made since 2011.
- 11 Table 1 below sets out the number of children/young people placed on a Special Guardianship Order and in receipt of financial support at the end of each of the financial years, showing a 63% increase from 31st March 2013 to 31st March 2018. These totals, however, only represent cases that were/are in receipt of support services, (primarily financial support) as once payments cease, cases are closed. However, the overall number of SGOs made is likely to increase year on year, as these will include both existing cases requiring support and new cases made each year.

Table 1

Total Number of Children/Young People receiving Special Guardianship support



- 12 An increase in SGO arrangements is a positive outcome for Durham's children as long as the appropriate support is in place to sustain these arrangements long term. The child can remain within their extended family and they cease to be Looked After.

Non-LAC Placements Expenditure

Budget

- 13 Table 2 below shows the budget and actual expenditure, forecast and forecast variance in the current year for Special Guardianship allowances and a similar allowance paid under a Child Arrangement Order, both of which follow the same process for the calculation and payment of financial support.
- 14 Child Arrangement Orders were introduced in April 2014 by the Children and Families Act 2014 (which amended Section 8 Children Act 1989) and replaced Contact Orders and Residence Orders. A Child Arrangement Order means a court order regulating arrangements relating to;
- (a) with whom a child is to live with, spend time or otherwise have contact; and
- (b) where a child is to live, spend time or otherwise have contact with any one person.
- 15 The budgets for both type of Orders and allowances were revised in 2017/18 following a successful growth bid. Preliminary outturn indicates an overspend of £425K on these type of allowances in 2017/18.

Table 2

Financial Year	Account Code Description	Annual Budget (Original)	Annual Budget (Current)	Budget YTD	Actual YTD	YTD Variance	Forecast	Forecast Variance
2018	Child Arrangement Orders	£562,245.00	£570,566.00	£570,566.00	£539,568.72	(£30,997.28)	£535,377.00	(£35,189.00)
2018	Fostering-special guardianship	£1,870,035.00	£1,897,712.00	£1,897,712.00	£2,353,944.43	£456,232.43	£2,352,597.00	£454,885.00
Grand Total		£2,432,280.00	£2,468,278.00	£2,468,278.00	£2,893,513.15	£425,235.15	£2,887,974.00	£419,696.00

- 16 Table 3 overleaf provides a breakdown of the duration of time financial support has been provided to current SGs. Whilst it must be noted that the accuracy of this data may not be solely relied upon, due to breaks in financial provisions as a result of reviews and appeals, it still provides an overview of the duration of financial support currently being provided. If a manual check of all cases were to be undertaken it is likely to reveal a much higher number of cases who have received financial support for more than two years.

Table 3

Duration of Financial Support

Duration of Financial Support	Total Number Receiving Support	%
(a) 12 Months or less	93	26%
(b) 13 to 24 Months	68	19%
('c) 25 to 36 Months	53	14%
(d) 37 to 48 Months	36	10%
('e) 49 Months or More	114	31%
Grand Total	364	100%

- 17 Financial support paid periodically is usually based on the level of Age-Related Fostering Allowance and paid as 'Transitional' financial support up to a period of 2 years. At present 161 (45%) cases are being paid up to 2 years, a further 203 cases (55%) beyond two years and of these 114 cases (31%) for more than four years. Whilst there are a number of outstanding appeals, which may, when reviewed, cease, there will still be cases which still require support, including financial support, to maintain the placement. An assessment of needs will inform both the reviews and appeals which will be submitted to the Special Guardianship Panel and/or Appeals Panel where a decision will be made to continue/cease financial support.

Team Responsibility

- 18 At present teams throughout Children's Services undertake the initial assessment of a Special Guardianship Order and undertake a review of the Support Plan together with a review of support following representations being received from the SGs. It is evident that these cases are often allocated to different Social Workers' caseloads and therefore it is a challenge to prioritise the review. These circumstances can lead to payments continuing beyond end dates.
- 19 This demonstrates that annual reviews are not being consistently undertaken at the end of the first year of receiving financial support. Furthermore, there are currently 182 outstanding appeals, challenging why payments have ceased. At present whilst the appeal is outstanding, weekly payments continue.
- 20 The weekly expenditure for these appeal cases totals £22,681 that equates to annual expenditure of £1.183million. Furthermore, the longer a payment continues, the more reliant a SG is on this level of income.

- 21 It must also be noted that some SGs would indeed suffer severe financial hardship if payments were withdrawn and therefore assessing needs and providing the appropriate support to SGs is crucial. It is likely that the changes to benefits and impact of universal credits will also have a direct impact on these carers. The importance of access to Welfare Rights and supporting SGs to access all benefits to which they are entitled is highlighted in the Special Guardianship Regulations and must play an integral part of the support provided to SGs. Clearly if the arrangement were to break down then the child would inevitably come into the Looked After System, which would be detrimental to the wellbeing of the child and mean additional costs to that budget.

Summary of Internal Audit

- 22 A recent audit of Transitional Financial Support for Special Guardianship Orders (SGO) carried out by the Quality Improvement Team identified a 'limited' level of assurance about practitioners' compliance with the SGO procedure and review process. This highlighted the lack of a consistent approach across teams to review support, provide a timely and effective method of communication with SGs and make full use of the appropriate documents within the policy for recording purposes.

Key Actions

- 23 Following significant research and discussions with other local authorities and legal services, a number of key actions have been identified to address the issues highlighted in this report. These are set out below:

Revised Special Guardianship Policy

- 24 The revised Policy (Appendix 2) is similar to the style/layout adopted by a number of other local authorities and seeks a consistent approach in providing both practitioners and service users with an open and transparent policy. It sets out a structure with clear guidance, which is compliant with Special Guardianship Regulations 2005 and links to associated documents and policies to be used throughout the Special Guardianship process.

'New' Support Services Policy & Procedure

- 25 Whilst support is already available to existing SG carers, the provision of a separate 'Support Services' Policy (Appendix 3) provides further clarity of support available, including a range of support services available in different areas to meet the needs of people affected by Special Guardianship (Regulation 3 para 24). This support does not necessarily mean financial support and includes mediation services, therapeutic services, respite provision, counselling and advice, etc.
- 26 Ultimately, support may be provided from a variety of other means and services and following the review of the Special Guardianship Policy, a significant amount of work has been undertaken, with both teams across Children's Services and the Voluntary and Community Sectors, to develop a 'Menu of Support', that will help both SGs and children/young people in their care. This support also focuses on the SG carer in providing access to

Special Guardian Support Networks/meetings across the County and access to support from a trained 'befriender, many of whom are SG carers.

- 27 The Policy also seeks to change the mindset of some practitioners, who focus primarily on the provision of financial support. As explained above, support may be accessed from a variety of other services and practitioners need to consider these services with prospective/current Special Guardians as opposed to automatic access to financial support. However, where financial support is to be provided, it is crucial that full details of the purpose, amount and duration of support are recorded and shared with the SG.
- 28 The main change set out in this Policy is the frequency of payment of transitional financial support. At present payments are normally paid in regular weekly payments. In accordance with Regulation 8, for new service users, periodic payments will only be provided to meet a need, which gives rise to recurring expenditure, otherwise financial support will be paid as a 'single' payment or, in agreement with the SG, via instalments. It is envisaged that this will reduce the dependency on a weekly allowance and provide SGs with the opportunity to purchase costly items, which support the child/young person's transition into the family home.
- 29 It is also proposed that where Special Guardians have received periodic financial support which is time limited or to be used for a specific purpose in accordance with Regulation 10 (2) and they make representations against the ceasing of this support, consideration should be given to a 'zero-based' assessment (the SG will still need to provide evidence of financial circumstances) to meet an assessed need. Regulation 6(d) allows the local authority to contribute to the expenditure necessary for the purpose of accommodating and maintaining the child, including the provision of furniture and domestic equipment, alterations/adaptations to the home, provision of means of transport and provision of clothing, toys and other items necessary for the purpose of looking after a child. This support can be offered at any time, it is not restricted to where the SG has made representations about the decision to cease paying financial support.
- 30 The new approach will reduce the amount of financial support being paid weekly and the reliance on weekly payments, providing a more targeted approach to financial support, which meets the assessed needs of children/young person.
- 31 It is crucial that prospective and current SGs are very clear about the support that is available to them, including the amount and duration of financial support (now set out in SG leaflet) and the arrangements they need to make to ensure they are in a position to support the child once any financial support ceases.

Dedicated Review Officers

- 32 The appointment of 2 FTE x Review Officers, funded from existing staff vacancies within the service, for an initial period of 12 months are providing greater control over this area of expenditure with the aim of reducing the projected budget overspend. Both appointments have now commenced and priority has been given to outstanding appeals.

Training Requirement

- 33 The many challenges that local authorities currently face in respect of Special Guardianship, whether they be judicial reviews, Local Government Ombudsman cases, appeals or complaints emphasise the importance of a consistent and rigorous approach to Special Guardianship processes.
- 34 With this in mind and the many issues raised within this report it is clear that a bespoke training package is required for both new and existing staff, which will include the launch of these revised Policy & Procedures. A training course is currently being developed which will form part of an annual training programme and staff induction, which will help to ensure a consistent approach is adopted across the service.

Equality Impact Assessment

- 35 An Equality Impact Assessment (EIA) has been undertaken to assess the impact on existing service users, which will be representative of the group and profile of 'new' service users likely to be affected by these proposals. The EIA is attached as Appendix 4.
- 36 At this stage it is likely that over 44% of 'new' service users (SGs) are aged 50+, many likely to be grandparents and female. It is likely that the gender of children/young people subject to a SGO is an equal split between male/female and the age group primarily ranges from 5yrs to 13 yrs.
- 37 In summary, the negative impacts refers to reducing the option and flexibility for 'new' service users to provide weekly financial support (for some) as opposed to a 'one off' payment or via instalments, which some SGs may find it easier to manage their respective finances. This may have a greater impact for older SGs, such as grandparents, taking on this additional responsibility of these children in their care at this period of their lives
- 38 There are positive impacts in that the level of 'transitional financial support' will remain the same, based on the age-related fostering allowance and the access to other support/services is vastly improved with particular benefits for older women and those with disabilities.
- 39 In addition, the proposal to provide a 'zero-based assessment' will allow for access to financial support for one-off payments, without the need for a full financial assessment. This is positive for the SGs and the children/young people in their care. This is also compliant with Regulation 6(d) of the Special Guardianship Regulations, which enables the authority to consider making a contribution to the expenditure necessary for the purpose of accommodating and maintaining the child.

Consultation

- 40 It is proposed that the Council seeks the views of the key stakeholders and the wider public, including exiting SG carers and voluntary services, through consultation on the proposed adoption of the revised Special Guardianship Policy and Support Services Policy and Procedure. The EIA will be updated following the consultation.

- 41 Some examples of how services users could be impacted by these proposals, if they were applied to existing SG carers, are shown in Appendix 4.
- 42 Following Cabinet approval of the draft policies and procedures, it is proposed that a 6 week consultation will begin immediately thereafter. Cabinet is asked to delegate authority to the Corporate Director Children & Young People's Services in consultation with the Cabinet Member for Children & Young People's Services to consider the outcome to the consultation, make any consequent changes to and implement proposals. Any policy changes would be implemented from mid/end July 2018.

Conclusion

- 43 This report sets out an overview of the revised Special Guardianship Policy and the new Special Guardianship Support Services Policy & Procedure which seeks to provide practitioners and service users with an open and transparent policy, providing a consistent approach and adhering to Special Guardianship Regulations (2005). The Support Services Policy & Procedure also provides further opportunity for both SGs and children/young people placed in their care, to access a wide range of support and services from mainstream provision and external providers.
- 44 The proposed changes to the frequency of payment of financial support and the opportunity to provide 'one-off' payments adhere to the guidance set out in the Special Guardianship (Regulations).

Recommendations

- 45 Cabinet is asked to note the content of the report and support the following recommendations:
- (a) That a 6 week consultation is undertaken on:
- (i) Adopting new Special Guardianship Policy & Procedures which are open and transparent and seek to provide a consistent approach for practitioners in adhering to Special Guardianship Regulations (2005) and access to a vast range of support and services;
 - (ii) Proposal to change frequency of payment of transitional financial support (still based on age-related fostering allowance and payable up to two years) for 'new' service users, who do not require ongoing financial support and provide 'one-off' payments or via instalments, reducing the dependency on weekly financial payments. In addition to provide the flexibility to access 'one-off' payments (not based on age-related fostering allowance) to meet an assessed need (Reg 6(d)).

(b) To delegate authority to the Corporate Director of Children and Young People's Services in consultation with the Cabinet Member for Children and Young People's Services to consider the outcome to the consultation, make any consequent changes to and implement the proposals.

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Appendix 1: Implications

Finance – The review of current policy and procedures, payment arrangements and method of review should result in financial support targeted at Special Guardians and children/young people to meet an assessed need.

Staffing – Recruitment and selection process undertaken - two Review Officers commenced mid-February.

Risk – Due to the continued payment of the weekly allowance to existing carers, carers may become dependent upon this financial support.

Equality and Diversity / Public Sector Equality Duty – Equality Impact Assessment completed and attached.

Accommodation - None

Crime and Disorder – None

Human Rights – None

Consultation – Proposed consultation over 6 weeks' period to be undertaken with key stakeholders in respect of the proposed changes including frequency of payments and flexibility in providing 'one-off' payments to meet an assessed need (Reg 6(d)).

Procurement - None

Disability Issues - None

Legal Implications – Legal advice sought throughout the review process to ensure compliance with caselaw and statutory guidance. The local authority has a duty to carry out an assessment for Special Guardianship support at the request of a child who was looked after immediately before the order was made, the SG or the child's parents and the power to offer an assessment in other cases. The local authority has discretion about whether to provide financial support but the statutory guidance does make it clear that financial issues should not be the sole reason for a special guardianship arrangement failing to survive.