

# Draft policy for special guardianship financial support

## Introduction

The purpose of this policy is to set out Herefordshire Borough Council's ("the local authority") approach to Special Guardianship Order Allowances. The scheme of the policy is as follows:

- Legislative background
- Principles
- Conditions of support and cessation of support
- Requests for assistance and assessment
- Non-periodic financial support
- Periodic support
- Appeals

A draft of this policy was the subject of a consultation exercise between [dates] and an Equality Impact Assessment was carried out on [date]. A list of those consulted is available upon request.

It is intended that this policy will be reviewed 6 months after it comes into effect and thereafter annually. Comments or feedback on the initial operation of the policy are welcomed.

## **1. The Special Guardianship Regulations 2005 and the DfES guidance to the Regulations**

- 1.1.** The Regulations, supported by the guidance, govern the processes by which local authorities exercise their discretion in determining requests for special guardianship support services, including financial support. This policy relates to **financial support only**.
- 1.2.** Carers who are proposing to care for a child under a Special Guardianship Order or who are caring for a child under a Special Guardianship order can request an assessment for support, including financial support, under the Special Guardianship Regulations 2005.
- 1.3.** According to Regulation 6 of the 2005 Regulations, financial support may be paid to a special guardian or prospective special guardian –
  - a.** To facilitate arrangements for a person to become the special guardian of a child where the local authority consider such arrangements to be beneficial to the child's welfare; or
  - b.** To support the continuation of such arrangements after a special guardianship order is made

**1.4.** Such support is payable only in the following circumstances -

- a. Where the Local Authority consider that it is necessary to ensure that the special guardian or prospective special guardian can look after the child;
- b. Where the Local Authority consider that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of his illness, disability, emotional or behavioural difficulties or the consequences of his past abuse or neglect;
- c. where the Local Authority consider that it is appropriate to contribute to any legal costs, including court fees, of a special guardian or prospective special guardian, as the case may be, associated with -
  - i. the making of a special guardianship order or any application to vary or discharge such an order;
  - ii. an application for an order under section 8 of the Act;
  - iii. an order for financial provision to be made to or for the benefit of the child

**2. The principles underpinning the payment of Special Guardianship allowances and financial support:**

**2.1.** No child should be unfairly disadvantaged.

**2.2.** People should be treated equally and fairly.

**2.3.** Allowances and grants are paid for the child. Any extra payments are to cover the specific needs of the child e.g. for protection, safety etc. Support services should not be seen in isolation from mainstream services and it is important to ensure that families are assisted in accessing mainstream services. Special Guardians should be helped to access their entitlements to tax credits and social security benefits. Efforts will be made by the Local Authority to obtain financial support from the child's parents where appropriate.

**2.4.** It is recognised that a foster carer might be able to provide permanency which is in a foster child's best interests, but be deterred from applying for Special Guardianship because of the loss of the fostering allowance and any reward (fee) being paid in respect of the child. This policy seeks to address that concern by ensuring, consistently with paragraph 43 of the Guidance, that a former foster carer has a period of financial stability upon becoming Special Guardian to a former foster child.

**3. Conditions of support and cessation of support**

**3.1.** The special guardian must agree to the conditions listed in reg.10(1) of the 2005 Regulations and must comply with them. S/he must notify the Local Authority of any change of circumstances and must complete and return the annual statement. Failure to do so may result in payment being suspended or terminated and recovery

of any payments made. Additional conditions on the provision of support may be imposed by the Local Authority as considered appropriate in the circumstances.

**3.2.** The Local Authority will review the payment of financial support on receipt of the annual statement each year and, if it proposes to reduce or terminate the support or revise the plan, it will notify the special guardian of the decision and will allow a period of 28 days in which the special guardian may make representations, which will then be considered by the Local Authority and a final decision made.

**3.3.** The payment will cease when any of the events listed in Reg.9 occur, that is, if the child ceases to live with the Special Guardian, ceases full time education or training and commences employment, qualifies for universal credit, income support, jobseekers allowance or employment support allowance in his own right or becomes 18 (unless he is in full time education or training, in which case the allowance may continue until the end of the course or training he is undertaking when he becomes 18).

#### **4. Requests for financial assistance and assessments**

**4.1.** If a request for financial assistance is made by a prospective special guardian of a child who is looked after by the Local Authority or a special Guardian of a child who was looked after immediately before the making of the special guardianship order, (or such child or the child's parents) then an assessment will be carried out (This is required by Regulation 11(1) of the 2005 Regulations).

**4.2.** Requests for financial support from other persons (not falling within 4.1 above) will be considered, but unless the Local Authority is satisfied that there are exceptional circumstances, a financial assessment, including a means test, will not be conducted. It is not possible to specify the sort of circumstances which might be regarded as exceptional because case by case consideration is required. However, by way of example, if the Local Authority is satisfied, having regard to its history of involvement with the child, that the child would (on the balance of probabilities) have become looked after had the Special Guardian not stepped in to care for them, the Local Authority might consider that to amount to an exceptional circumstance warranting a financial assessment for support. In those circumstances consideration of financial support will be on the assessed needs of the child under regulation 12 and the local authority considering that the award is necessary to ensure that the special guardian can look after the child.

**4.3.** In the event that the Local Authority decides not to conduct a financial assessment, it will notify the applicant of the reasons for the decision and allow him/ her a reasonable period within which to make representations, which will then be considered by the Local Authority. The final decision will be made, and the person requesting assessment notified of it, within a reasonable period of receipt of their representations (Reg.11(2) and 11(3)). The Local Authority will ordinarily consider 28 days to be a reasonable period both for the making

of representations and notification of the Authority's decision, however, this period may be extended in the exercise of the Authority's discretion.

## **5. Non-periodic financial support**

**5.1. Contribution to settling in grant** – This may be awarded where the Local Authority considers it appropriate further to an assessment of the needs of the child joining a new family under a special guardianship order. Reference will be made to a list of Basic Requirements for children of different ages held by the Local Authority. The price of items needed will be based on the price of equivalent items from Argos or Mothercare. The grant is not paid if the child was in foster care and the foster carers have applied to be that child's special guardians, unless there are exceptional circumstances which would justify such a grant being made. Where awarded the grant is paid up to an agreed maximum per child. This may be exceeded in exceptional cases with the approval of the Head of Service.

**5.2. Legal Advice** – Financial support may be available for this, unless the prospective Special Guardian has access to free legal representation, and if so, is paid at the "legal help" rates. It is only paid for children known to the Local Authority prior to the application being made (i.e. Children Looked After, or designated Children in Need subject to child protection plans), where the Local Authority supports the making of the SGO, unless there are exceptional circumstances and where:

- I. The Local Authority considers that the carer or prospective special guardian requires legal advice about the different care arrangements that could be made for the subject child and supports the child being placed or remaining in his/her care; and
- II. Where he/she is not eligible for legal help or any other financial assistance for example under an insurance policy; and
- III. The Local Authority considers that his/her financial circumstances are such that it would not be reasonable to expect him/ her to pay his/ her own fees.

This is payable up to the Local Authority's agreed limit for the initial consultation. The solicitor instructed should be a member of the Law Society's Children Panel, unless otherwise agreed by the Local Authority in advance. Itemised bills will be required.

### **5.3. Legal fees for representation in court –**

- a) To make an application for a special Guardianship order. These are only paid where:
  - I. The application relates to a child who is Looked After or who was looked after prior to being cared for by the prospective special guardian, or would have been had the special guardian not stepped in; and
  - II. The Local Authority supports the application; and
  - III. The Local Authority considers that the prospective special guardian requires separate representation; and

- IV. Where he/she is not eligible for public funding or any other financial assistance for example under an insurance policy; and
- V. The Local Authority considers that his/ her financial circumstances are such that it would not be reasonable to expect him/ her to pay his/her own fees.

Legal fees are paid at the CLS Public funding rate save for exceptional circumstances. The solicitor instructed should be a member of the Law Society's Children Panel, unless otherwise agreed by the Local Authority in advance. Itemised bills will be required.

- b) Applications for payment of legal fees to defend contact and other applications or to make applications for orders (e.g. non-molestation orders and prohibited steps orders during the currency of a special guardianship order)

Advice and representation in respect of any proposed applications will be subject to the criteria listed above and the Local Authority's assessment of the merits of the case.

Non-periodic financial support may, where it is considered appropriate by the Local Authority, be paid without an assessment of the means of the Special Guardian (and/ or child).

## **6. Periodic monthly allowances**

- 6.1. These allowances are linked to the Local Authority's fostering allowances and are based on the needs of the child. They are not generally paid, unless the child is (or was immediately before the Special Guardianship order was made) a looked after child. However, in exceptional circumstances where the child is not and was not looked after, the allowance may be payable.
- 6.2. The allowance is paid to foster carers (including friends and family carers) following the making of a special Guardianship order in respect of a previously fostered child. Where foster carers are already receiving a fostering allowance for a child for whom they have applied to be special guardians, the Local Authority will maintain their level of allowance after the order is made but subject to deduction of benefits which the former foster carer can, as a Special Guardian, claim in respect of the child such as child benefit, tax credits etc. Any allowance must be subject to means testing and an annual assessment by the Local Authority (save as specified below in paragraph 6.3).
- 6.3. The Local Authority has a discretion not to means test in relation to a former looked after child who needs special care which requires a greater expenditure of resources than would otherwise be the case because of his illness, disability, emotional or behavioural difficulties or the consequences of past abuse or neglect (see Reg.6(2)(b) read together with Reg.13(5)(a)(iii)). The Local Authority also has a discretion to disregard means (ie it would not means test) where it is considering payment to a former foster carer (who received a fee when fostering) of an element of special guardianship allowance to reflect lost remuneration. This discretion will only apply where the foster carer received a fee or

reward element (in addition to the basic fostering allowance). See also 6.6 below in relation to this. The fee or reward element is not applicable where the special guardian was not a former fully approved foster carer under Section 27 of the Fostering Services (England) Regulations 2011.

- 6.4.** Payment in respect of a child's special needs will generally be subject to a full assessment of that child's needs and the special guardian's financial circumstances. Payments will only be made for the child after all other alternatives in terms of benefits, grants and services have been explored, and the level of the child's needs will be reviewed annually.
- 6.5.** Special Guardianship financial support is payable to the special guardian to care for the child and meet his/her assessed needs, irrespective of where the special guardian is living i.e. including abroad. However, if the special guardian moves abroad from the UK, or is already living abroad when the child moves to their care, the level of allowance may be altered to take into account comparative costs of living in the country of residence. This will be assessed by reference to a comparison between the cost of a "basket" of everyday items such as groceries and clothing, housing costs and utility costs in the UK and the cost of the same or comparable items in the country of residence of the child.
- 6.6.** Where a foster carer was in receipt of a fostering fee, and becomes Special Guardian to the previously fostered child, they will generally continue to receive the fee (remuneration) element as part of the Special Guardianship Allowance, less Child Benefit and Child Tax Credits, in order to maintain their level of income. The Local Authority may where it considers appropriate approve the payment of the fee element without means testing. The fee element ceases to be payable after the expiry of two years from the making of the special guardianship order, unless the Local Authority considers its continuation to be necessary, having regard to the exceptional needs of the child or any other exceptional circumstances. Where the foster carer was approved by an Independent Fostering Provider, the allowance and fee payment may be negotiated individually as there may be significant disparity between the allowance and fee paid to a Local Authority foster carer and that which has been received from an Independent Fostering Provider.
- 6.7.** The allowance includes payment for birthdays, festivals, holidays and school uniform and separate additional payments in respect of these items will not be made.
- 6.8.** Contact expenses: It is recognised that there may be a need for contact to be maintained between the child and his/her birth family or other persons after the special guardianship order is made. The principle employed by the Local Authority is that the special guardian is expected to be able to manage contact themselves or is working towards taking responsibility for this within a reasonable timeframe. The Local Authority may, however, where it considers appropriate, make payment of contact expenses without assessment of the means of the special guardian. The payment of expenses in respect of contact will be based on an assessment of the child's needs, the circumstances of the individuals involved and the nature of the contact arrangements,. Such support, when agreed, must be recorded in the Special Guardianship support plan and is subject to annual review. If contact supervision is

needed, this should be based on a risk assessment by the Local Authority.

**6.9.** The Local Authority will use the Government's Model Means Test to assess eligibility for allowances in all circumstances in which it is required, or decides, to means test in respect of Special Guardianship financial support applications, and to calculate the proportion of the full allowance payable (on a sliding scale according to the special guardian's means).

6.10 Eligibility for the allowance, and the proportion payable to a particular special guardian, are subject to review every year to take account of both the changing needs and circumstances of the child and special guardian. The Model Means test will be applied annually or on receipt of notification of a change in circumstances prior to the annual review.

6.11 The level of the full Special Guardianship allowance will be reviewed annually by the Local Authority.

## **7. Appeals**

If dissatisfied with a decision as to payment or amount of allowance, the holder of the SGO may appeal against any decision relating to the provision of an SGO Allowance. **[INSERT DETAILS OF APPEAL RIGHT – E.G. IN WRITING, TO WHOM, TIME LIMIT FOR AN APPEAL]**