

Special Guardianship Allowances Policy

Responsible Officer Karen Bradshaw

e-mail: karen.bradshaw@shropshire.gov.uk **Tel:** 01743 254201

1. Summary

- 1.1 This report sets out proposals to update Shropshire Council's 'Permanence Finance Policy', which details the criteria for financial support that is to be paid to Special Guardians. The requirement to update the policy has been prompted by case law developing local practice following a recent decision by the Local Government Care Ombudsman as well as feedback from Special Guardians.
- 1.2 The revised 'Financial Support for Children Subject to Special Guardianship Orders' (SGO) policy provides information to practitioners, Special Guardians and prospective Special Guardians about the financial support available to support families offering a permanent home to a child through Special Guardianship. The proposals contained in the draft policy have been extensively consulted upon.
- 1.3 The fundamental principles of the revised policy support the Council's strategy to reduce the number of children looked after by the council and the subsequent level of Social Work intervention in family life where this is no longer required. The draft policy aims to strengthen the financial support offer available to Special Guardians, providing stability and assurance for them to meet the child/ren's needs until the age of 18. The review that has taken place ensures that our policy is more equitable and meets Statutory Guidance.
- 1.4 There are currently 101 Connected Carers. The Fostering Service is of the view that without providing financial certainty until the child is 18, Connected Carers / Foster Carers may be deterred from progressing an SGO.
- 1.5 Special Guardianship Orders were introduced in the Adoption and Children Act 2002 as an additional legal permanence order. They were introduced for children where adoption was not deemed to be suitable but where legal permanence for a child was required. The Special Guardian is given parental

responsibility to enable them to make important decisions for the child. The balance of parental responsibility and decision making is bestowed onto the Special Guardian and takes precedence to that of the birth parent. The Special Guardianship Order (SGO) means that the child is no longer in the care of the local authority and the role of children's statutory looked-after service ceases. SGO's are mostly used to progress a plan of permanency in long-term fostering and connected carer arrangements; where children are cared for by grandparents, aunts, uncles, close family friends. Within this arrangement there is no need to completely sever the link with a child's birth family as is the case in adoption. The family dynamics remain the same, meaning the connected carer maintains their position (aunt, uncle, grandparent, family friend) and does not replace the mother / father. It suits a lot of children where they do not wish to lose the legal link with their birth parents but provides them with the security of an enduring placement with their Special Guardian.

- 1.6 Similar to adoption, Special Guardians are entitled to post-order support both financial and practical. It is a regulatory requirement for Special Guardians to be offered ongoing training, access to support groups and an annual review of their support needs. SGO's remain in place until a child is 18 and the local authority retains responsibility until the child is 18 or until they complete statutory education, whichever is first.
- 1.7 The requirements for the Council to be responsible for financially supporting Special Guardians is set out in the following:
 - Children Act 1989
 - Special Guardianship Regulations 2005 ("the 2005 Regulations") (as amended)
 - Department for Education Special Guardianship Guidance: Statutory guidance for local authorities on the Special Guardianship Regulations 2005.
 - Children Act 1989

2. Recommendations

- 2.1 That Cabinet approve the draft policy entitled "Financial Support for Children Subject to Special Guardianship Orders" as attached at Appendix A from 1st April 2021.
- 2.2 That Cabinet agree to the backdated payment to Special Guardians who now care for children who were previously looked after.

REPORT

3. Risk Assessment and Opportunities Appraisal

(NB This will include the following: Impact on Children and Vulnerable Adults, Risk Management, Human Rights, Equalities, Community and other Consultation)

- 3.1 A screening ESIIA was carried out on 22/10/20 prior to the consultation and reviewed and updated after the consultation on 08/01/21. The ESSIA can be found at Appendix B.
- 3.2 This proposed service change applies to a grouping of children who have been previously looked after by the local authority or could potentially come into the care of the local authority, and permanence has then been, or may be, secured through what is known as a Special Guardianship Order. As such, the equality impacts mainly apply to the Protected Characteristics of Age, Social Inclusion, and potentially Disability and Gender, the latter in relation to caring responsibilities.
- 3.3 The impacts for these children and the people who are caring for them, ahead of the public consultation, were anticipated to be neutral to low positive for these groupings, and neutral across all other groupings. Following the consultation, they remain anticipated to be neutral to low positive.
- 3.4 Health and wellbeing impacts are anticipated to be neutral at this stage, and complementary to the positive emotional wellbeing and mental wellbeing impacts for children who become settled in a permanent home as a result of an SGO.
- 3.5 The feedback received from the consultation indicates that concerns are largely based on the complexities of individual circumstances and the challenges of trying to understand the implications of the policy changes. As a result of the feedback received the service has made changes to draft policy and is recommending the allowances for children are paid up until the child reaches the age of 18 years. This will provide assurance to Special Guardians that they will have the financial stability to support these children's future needs.
- 3.6 The review of the policy also seeks to prevent legal challenge being brought against the Council from existing and Prospective Special Guardians. It ensures that the Council is compliant with Statutory Guidance and case law principles. Section 6.4 below outlines consideration that has been given to the Local Ombudsman Report on the investigation into a complaint on Rochdale MBC. In December 2019 LG&SCO's report identified that Rochdale Council was at fault for failing to act in accordance with the law and relevant statutory guidance when providing SGO allowances. Rochdale Council initially sought a Judicial Review of the findings of the LG and SCO and made an application to the High

Court. The High Court decided that Rochdale Council's case did not pass the legal threshold for the court to intervene. This subsequently resulted in significant financial implications for the council in terms of legal actions taken and subsequent backpay to Special Guardians. The 'Financial Support for Children Subject to Special Guardianship Orders' policy seeks to prevent the Council experiencing costs associated with legal action.

- 3.7 The financial consequences of not implementing the proposed policy changes could be considerably higher costs than the additional costs outlined in the section below. In addition to the continued social worker time and associated travel costs of visiting children who would continue to be looked after by the Local Authority, and there is a risk of legal challenge from Special Guardians who are aware of the difficulties that Rochdale MBC found themselves in.

4. Financial Implications

- 4.1 Financial Modelling has been undertaken to establish the additional cost of the proposed 'Financial Support for Children Subject to Special Guardianship Orders' policy. Based on the existing cohort of 80 children, the increased cost to the Special Guardianship Allowances budget in the 2021/22 financial year is estimated to be **£28,560**, with anticipated annual expenditure increasing from £573,830 to £602,390. Expenditure growth has been built into the Children's Social Care 2021/22 budget in anticipation of this increased cost to the service.
- 4.2 One of the considerations for Cabinet to review is the issue of back pay. Taking a lead from the approach adopted by Rochdale in addressing the finding of maladministration with regard to its Special Guardianship Policy, it is recommended that if the draft Policy is agreed, that those special guardians currently in receipt of payments from the Council should be reviewed. Where, as a result of the new Policy the special guardians will be entitled to additional payments, the Council will consider backdating those payments for up to 3 years to the 1st April 2018. This is considered to be a fair and reasonable period of time over which to make the back-payments and consistent with the approach taken by Rochdale who had the benefit of advice from leading counsel on the issue. The total cost of such back-payments would be **£120,410**. This figure comprises the total backpay for the following financial years; 2018/19, 2019/20 and 2020/21 with a 10% contingency built in to provide for any unidentified potential claimants. Therefore, the total additional cost of implementing this policy is the **£28,560** ongoing annual increase in expenditure plus one-off backpay totalling no more than £120,410.
- 4.3 Members are also asked to approve the application of a £10,000 cap to any back payments to Special Guardians. The financial modelling indicates that no current Special Guardians trigger the £10,000 cap, however members are requested to consider this as this would provide a set limitation on any unidentified potential claims. This is a reasonable amount and is in line with the policy applied by Rochdale Council.
- 4.4 Please note that backpay would only be considered in relation to allowances paid for children previously looked-after by the Local Authority. Please note that

all options are subject to the 10% contingency built in to provide for any unidentified potential claimants.

- 4.5 It is important to note that while these are additional costs to the Children's Social Care budget, it is anticipated that there will be a reduction in costs relating to Social Worker time and associated travel from these children ceasing to be looked-after.

5. Climate Change Appraisal

- 5.1 There is the potential for a positive impact on climate change. It could reduce the travelling necessary by social workers, if the children do not have to be visited regularly as part of the statutory duty toward children who are in the care of the Local Authority. The proposed service change will factor in alignment of service area activity with the corporate aims with regard to climate change, as set out in the report on the Climate Emergency Strategy and Action Plan presented to councillors in December 2020.

6. Background

- 6.1 Shropshire Council has a commitment to ensuring permanence is secured for children who are looked after by the council; subsequently there is a current and future significant financial commitment to children subject to Special Guardianship Orders (SGO). There are 62 SGO carers being paid, amounting to 80 children's SGO allowances.
- 6.2 The Council currently has a 'Permanence Finance Policy' that details financial support arrangements for children who are subject to Special Guardianship Arrangements.
- 6.3 The Council has identified that policy and practice changes are required to ensure that the process for implementing SGO allowances is clear, fair and consistently applied. The draft 'Financial Support for Children Subject to Special Guardianship Orders Policy' has been prepared and consulted upon. This has been prompted by case law, the Local Government and Social Care Ombudsman report mentioned in the next paragraph, local practice and feedback from Special Guardians. Currently the SGO allowance rate applied is based on the 'fostering allowance rate for the age of the child at the time the order is granted'. Upon annual review the allowance rates do not increase with age.
- 6.4 Consideration has been given to the Local Government and Social Care Ombudsman Report on the investigation into a complaint against Rochdale MBC. In December 2019 the report identified that Rochdale Council was at fault for failing to act in accordance with the law and relevant statutory guidance when providing SGO allowances. Rochdale Council applied a similar policy to

Shropshire Council's current 'Permanence Finance Policy' in that it did not provide age related allowances. The Ombudsman found Rochdale at fault and recommended that age related allowances should be applied to all Special Guardians in the borough with a recommendation for backdating compensation. Subsequently, Rochdale Council agreed to pay Special Guardians age related allowance increases for SGO allowances with a recommendation for backdating compensation up to 3 years. This report is recommending that Cabinet agree to the same period of back dating.

6.5 Consultation on the draft SGO Finance Policy took place from 03/11/20 to 14/12/20. The key principles of the policy consulted on were as follows:

- Clearly set out the Council's financial support offer and ensure the policy is equitable and fair
- Provide age related allowances in line with fostering allowance rates
- Implement means tested annual reviews with the use of the Department for Education's Standardised Means Test Calculator.
- Bring the Council in line with national developments, and case law principles
- Support improvements in the assessment and reviews of allowances

6.6 The Consultation Survey Report can be found in Appendix C. Consultation feedback was mixed; it was generally positive about the role of the Local Authority and purpose of the policy being clear. Feedback suggests that concerns are largely based on the complexities of individual circumstances and the challenges of trying to understand the implications of the policy changes. Special Guardians wanted to understand the implications of the annual means tested calculator could have on their individual allowances at each annual review and were concerned about the lack of financial assurance long term.

6.7 As a direct result of the consultation the draft policy has been updated with the recommendation that:

- The council **will** pay age related SGO allowances until the child is 18 for children who have previously been looked after by the Council.
- Financial Means will be disregarded for the purpose of paying child's SGO Allowance until the child is 18, unless there is a significant change in financial circumstances identified upon the annual review. Welfare benefits will be deducted.
- Request for Skills payment after 2 years post order will result in Financial Means Tested Assessment
- The policy will aim to reduce the number of children looked after by the Council and associated social work intervention in children's lives, strengthen the financial support offer to Special Guardians, thus providing financial assurance that they will be able to meet the long term needs of the child/ren.

6.8 Whilst the change in policy will be an increased cost in allowances paid by the Council; savings will be made on the associated costs of a child no longer being

looked after; including Social Work/IRO time, Carers DBS/Medicals, travel costs. Child benefit and child tax credit payment deductions will be made to all allowances where they are claimed. Allowances will be subject to review where there is a significant change in the Special Guardians' financial circumstances is identified.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Department for Education Special Guardianship Guidance: Statutory guidance for local authorities on the Special Guardianship Regulations 2005.
<https://www.gov.uk/government/publications/specialguardianship-guidance>

Cabinet Member (Portfolio Holder)

Cllr Ed Potter

Local Member

All Members

Appendices

Appendix A – Financial Support for Children Subject to Special Guardianship Orders
Draft Policy

Appendix B – ESSIA

Appendix C – Special Guardianship Orders Policy Consultation Feedback Report