



HEALTH, SOCIAL CARE & WELLBEING SCRUTINY COMMITTEE 25TH MARCH 2014

SUBJECT: FINANCIAL ASSESSMENT PROCEDURE FOR SPECIAL GUARDIANSHIP ORDERS AND RESIDENCE ORDERS

REPORT BY: CORPORATE DIRECTOR SOCIAL SERVICES

1. PURPOSE OF REPORT

- 1.1 To provide Members with details of a revised financial assessment procedure for determining financial support payable by Caerphilly CBC to carers of children under Special Guardianship Orders and Residence Orders.

2. SUMMARY

- 2.1 There are currently separate financial assessment procedures for Special Guardianship Orders and Residence Orders. These were introduced in 2006 and they have not been substantially reviewed since that time. The procedures have now been updated and combined into a single document taking account of best practice and guidance and external legal advice (see Appendix 1).
- 2.2 Members of the Scrutiny Committee are asked to consider and comment upon the revised financial assessment procedure prior to it being presented to Cabinet for formal endorsement.

3. LINKS TO STRATEGY

- 3.1 Assessment and Care Management Strategy and the Permanence Policy.
- 3.2 The Learning, Prosperous, Healthier and Safer themes of "Caerphilly Delivers", the LSB single integrated plan.

4. THE REPORT

- 4.1 Where children and young people are unable to live with their own parents, the local authority will, wherever possible, support them remaining with friends and family. It is important that children and young people have security and permanency in their living arrangements. On this basis the use of Residence Orders and Special Guardianship Orders in public and private law proceedings (as an alternative to children and young people becoming or remaining "looked after"), is encouraged within Caerphilly County Borough Council.

4.2 Residence Orders

- 4.2.1 A Residence Order is made under Section 8 of the Children Act 1989 and is a Court Order that identifies the person with whom a child is to live. It also gives that person parental

responsibility and allows them to take most of the decisions that a parent can take regarding the child's upbringing. The Order does not affect the child's legal relationship with his or her parents nor will it take away their parental responsibility, so parental responsibility is shared with the birth parents. Even though the person awarded a Residence Order is given parental responsibility, some decisions can still only be taken by parents with parental responsibility, such as the right to agree to or refuse to an Adoption Order being made and the right to appoint a guardian for the child.

4.2.2 The following provides examples of those individuals who are entitled to apply for a Residence Order: -

- Parent, guardian or special guardian.
- Any party to a marriage or civil partnership (whether or not subsisting) in relation to whom the child is a child of the family.
- Any person with whom the child has lived for a period of at least three years.
- A local authority foster carer, if the child has lived with the carer for a period of at least one year immediately preceding an application for an Order.
- A relative, if the child has lived with the relative for a period of at least one year immediately preceding an application for an Order.
- Anyone that doesn't fit into any of the above categories but has obtained specific permission from the court to apply.

4.2.3 There are two types of Court proceedings where a Residence Order may be the outcome. They are private law proceedings, e.g. when a marriage ends, and public law proceedings, where the proceedings involve the local authority and the child may become "looked after".

4.3 **Special Guardianship Orders**

4.3.1 Special Guardianship Orders came into force in 2005 and these are Court Orders appointing one or more individuals to be a child's "special guardian". It is intended for those children who cannot live with their birth parents and who would benefit from a legally secure placement. It is more secure than a Residence Order because a parent cannot apply to discharge it unless they have the permission of the Court to do so. However, it is less secure than an Adoption Order as it does not end the legal relationship between the child and his or her birth parents. A special guardian has responsibility for day-to-day decisions relating to a child's upbringing, which can be exercised to the exclusion of any other person with parental responsibility apart from other special guardians.

4.3.2 The following individuals are entitled to apply for a Special Guardianship Order: -

- Any guardian of the child.
- Any individual who has a Residence Order or any person where a Residence Order is in force and who has the consent of the person in whose favour the Residence Order is made.
- Anyone with whom the child has lived for at least three years out of the last five years.
- Anyone with the consent of the local authority if the child is in care.
- A local authority foster parent with whom the child has lived for at least one year preceding the application.
- Anyone who has the consent of those with parental responsibility.
- Anyone who has the leave of the Court.

4.4 **Effect of Orders**

4.4.1 When the court makes a Special Guardianship Order, it places certain duties upon the local authority in terms of both support services and financial assistance. Where a child lives or is to live with a person as a result of a Residence Order, the local authority may make contributions to that person towards the cost of accommodation and maintenance of the child.

4.4.2 In certain circumstances the Authority will pay carers an allowance for the ongoing support of a child or children in their care. This report focuses on the financial assessment procedure for determining the level of allowances payable in such cases.

4.5 The Financial Assessment Procedure

4.5.1 The following individuals are entitled to apply for a financial assessment: -

Relatives / friends who agree to take on the care of a child who: -

- is “looked after” by CCBC, or
- where CCBC determines, following an assessment of the child’s needs and agreement with the relevant area Service Manager, that the child would otherwise have become “looked after”.
- Relatives / friends who have been approved as kinship carers by CCBC specifically for that child.
- CCBC approved foster carers who are currently fostering the child.
- Independent agency foster carers who are currently fostering the child.

4.5.2 The payment of basic allowances for Residence Orders and Special Guardianship Orders is subject to a means-tested financial assessment. There are currently separate financial procedures for Residence Orders and for Special Guardianship Orders and these have not been reviewed in detail since they were introduced in 2006. The procedures have now been updated and combined into a single document taking account of best practice and guidance and external legal advice (see Appendix 1).

4.5.3 An overview of the financial assessment calculation is provided in Section 6 of the attached document. In summary this is as follows: -

- Calculation of the household income.
- Calculation of the Minimum Living Allowance (MLA) reflecting the size and circumstances of the family for which the assessment is being undertaken. The MLA is calculated from the income support and other benefits that would be payable to the family if they had no other source of income.
- A 25% buffer is applied to the MLA to ensure that families earning above the MLA are able to retain an element of those earnings before any deduction is made from the Residence Order or Special Guardianship Order maximum basic allowance.
- Further deductions from household income are also made for allowable expenditure as defined in Section 8 of the attached document.
- After all of the above have been taken into account the disposable income for the household has been determined. The financial assessment calculation allows for a percentage of this disposal income to be disregarded from the assessment and retained by the household. The resultant figure is then classed as assessed income, which is the maximum amount that will be deducted from the maximum basic allowance payable.
- In cases where the assessed income is nil no deduction is made from the maximum basic allowance.
- In cases where the assessed income exceeds the maximum basic allowance no allowance is payable.

4.5.4 The allowance payable is linked to Caerphilly CBC’s fostering rates applicable to the age of the child at the date that the Order was made. Under the current financial procedure this assessed allowance for both Residence Orders and Special Guardianship Orders remains fixed for the duration of the Orders.

4.5.5 The Authority has received external legal advice in relation to the level of allowance payable and it has been determined that it should increase on an annual basis in line with increases in Caerphilly CBC’s fostering allowances. The allowance should also be adjusted annually to reflect the age of the child or children subject to the Order.

- 4.5.6 From April 2011, the Authority's fostering allowances are paid in line with the Welsh Government (WG) "National Minimum Maintenance Allowances for Foster Carers". The revised financial assessment procedure for both Residence Orders and Special Guardianship Orders has been amended to link the gross allowances to the fostering rates paid by the Authority. This change will inevitably lead to increased costs as the current procedure does not allow for any annual increases in allowance and in many cases the current payments will be based on lower fostering rates which pre-dated the introduction of the (WG) "National Minimum Maintenance Allowances for Foster Carers".
- 4.5.7 Under the current policy households retain 50% of the assessed disposable income and the remaining 50% reduces the maximum basic allowance payable. Where there are sibling groups assessed under the current financial procedure this adjustment is made for each child. However, where there are more than 2 siblings this currently has the effect of double-counting the disposable income (e.g. for 3 children 150% of the disposable income is deducted). Further to external legal advice received on this issue the revised procedure has been amended to remove this double-count by assessing the household as a group rather than individual children. This change also results in increased costs for the Authority.
- 4.5.8 A number of other changes have been made to the revised procedure, the most significant of which are the following: -
- The income support allowance and 20% disregard of total weekly income has been replaced with a Minimum Living Allowance plus a 25% buffer.
 - The disregard of 50% of weekly disposable income has been replaced with a 20% disregard of disposable income.
 - There is now formal recognition that families may need financial assistance over and above the basic allowance via a supplementary allowance (see Section 13 of the attached document).
 - Where Orders are granted to guardians who were previously foster carers to the children of the Order, the foster carer fees will cease to be payable but a supplementary allowance will be paid for two years.
 - The revised financial assessment calculation is more transparent as it includes all sources of income and compensating allowable expenditure.
- 4.5.9 As a consequence of some of the changes detailed in paragraph 4.5.8 the assessed allowance payable for some existing carers will reduce. In these cases, it is proposed that the level of allowance currently payable will be protected for the duration of the Order (or until future financial assessments result in a higher allowance being payable or there is a significant change in financial circumstances).
- 4.5.10 It is proposed that the revised assessment procedure will be effective from 1st April 2014. However, due to the number of Orders in place, it will not be possible to immediately re-assess every family. Therefore, it is proposed that a re-assessment will be undertaken at the normal anniversary date for each family but the outcomes from those assessments will be backdated to 1st April 2014.

5. EQUALITIES IMPLICATIONS

- 5.1 No equality impact assessment has been undertaken on this report, however, the revised financial assessment procedure will ensure that those who are eligible to apply for support will be treated in a consistent and equitable manner and the resources available will be targeted at those in most need of financial support.

6. FINANCIAL IMPLICATIONS

- 6.1 At present there are 128 carers in receipt of allowances for children in their care under Special Guardianship Orders and Residence Orders. The additional cost of the revised financial

assessment procedure is £368k per annum (including protection). 85 carers would have an increase in the allowance payable, with 43 carers having an assessed reduction. As stated in paragraph 4.5.9, it is proposed that payments to those carers whose allowances would reduce as a consequence of the revised procedure will be protected at current levels for the duration of the Order (or until future financial assessments result in a higher allowance being payable or there is a significant change in financial circumstances).

- 6.2 A detailed assessment of commitments against 2014/15 placement budgets has been undertaken and due to reduced commitments against residential and fostering budgets, the additional cost of £368k arising from the revised financial assessment procedure can be met from within existing budgets.
- 6.3 The updated procedure is based on a 25% buffer being applied to the Minimum Living Allowance (MLA) and 20% of the weekly household disposable income being disregarded after deducting the MLA and allowable expenditure. Other options have been considered as illustrated in the following table: -

Description	Additional Cost (£000's)	No. of Carers with Increased Allowance	No. of Carers with Reduced Allowance
25% MLA Buffer with 10% Disregard	342	75	53
25% MLA Buffer with 0% Disregard	319	74	54
15% MLA Buffer with 0% Disregard	279	64	64
0% MLA Buffer with 0% Disregard	231	53	75

- 6.4 The above options would result in a lower additional cost than the £368k for the 25% MLA Buffer and 20% Disregard reflected in the revised procedure. However, these options are not favoured as the Directorate of Social Services wishes to encourage the use of Residence Orders and Special Guardianship Orders as an alternative to children and young people becoming or remaining "looked after". The alternative of a residential or foster placement would result in significantly increased costs for the Council.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no direct personnel implications arising from this report.

8. CONSULTATIONS

- 8.1 There are no consultation responses that have not been reflected in this report.

9. RECOMMENDATION

- 9.1 Members are asked to consider the content of this report and recommend to Cabinet that the revised financial assessment procedure attached as Appendix 1 should be endorsed.
- 9.2 Members are asked to support a recommendation to Cabinet that that payments to those carers whose allowances will reduce as a consequence of the revised financial assessment procedure will be protected at current levels for the duration of the Order (or until future financial assessments result in a higher allowance being payable or there is a significant change in financial circumstances).
- 9.3 Members are asked to agree that re-assessments will be undertaken at the normal anniversary date for each family but the outcomes from those assessments will be backdated to 1st April 2014.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To ensure that the Authority has a robust financial assessment process for Special Guardianship Orders and Residence Orders that is both affordable and supports the Directorate's permanency strategy.

11. STATUTORY POWER

- 11.1 Adoption and Children Act 2002.
- 11.2 Special Guardianship (Wales) Regulations 2005 as amended by The Adoption Support Services and Special Guardianship (Wales) (Amendment) Regulations 2013.
- 11.3 Children Act 1989.

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Appendices:

Appendix 1 – Financial Assessment Procedure for Special Guardianship Orders and Residence Orders (April 2014)