



Title of meeting: Cabinet Member for Children, Families and Education
Decision meeting

Date of meeting: 2 November 2023

Subject: Portsmouth Special Guardianship Order (SGO) Policy

Report by: Mark Jowett, Head of Service, Children We Care For

Wards affected: All

Key decision: Yes/No

Full Council decision: Yes/No

1. Purpose of report

- 1.1 The purpose of the report is:
- 1.2 Inform the Cabinet Member of revisions to the Special Guardianship Order Procedures and Financial Policy which are being made to support increased permanence for children in their family network.

2. Recommendations

- 2.1 That the Cabinet Member approves the new Special Guardianship Order Procedures and Financial Policy as attached at Appendix A.
- 2.2 The recommendation supports best practice and ensures Portsmouth City Council complies with legislation, statutory practice, and case law.
- 2.3 The recommendations will ensure that special guardians are appropriately financially supported for children in their care.
- 2.4 The recommendations will ensure that the special guardians receive their existing allowance for a transitional period of two years, before they are means tested in line with the policy.

3. Background

The Legislative Framework

- 3.1 The Adoption and Children Act 2002 provides the legal framework for special guardianship under the Children Act 1989. Section 115(1) of the 2002 Act inserted new



sections 14A-F into the Children Act 1989. A special guardianship order is an order appointing one or more people to be a child's special guardian.

- 3.2 An SGO, is an order made by the Family Court that is one of the options for permanency for children and means that children do not remain looked after by the Council as the special guardian has parental responsibility for them.
- 3.3 An SGO can be recommended by the Council when a family member is assessed to be an appropriate carer, or when a family member makes it known to the Court that they wish to be a special guardian. It is usually an option considered as part of care proceedings, rather than a free-standing private law application. Any potential special guardian is assessed by the Council which reports their assessment to the court.
- 3.4 An SGO can be made to a child's existing foster carer where the carer wishes to become a child's special guardian and a court make an order in their favour. The council will support such applications when appropriate.
- 3.5 Regulations and the Government statutory guidance provide that the Council should as part of any SGO support services plan, consider and provide, when necessary, financial support. As part of the assessment to the Court the Council is required to include a SGO support services plan including details of the financial support to be provided to support the child.
- 3.6 The changes within the revised SGO Policy relate to how financial support is calculated. If financial support is included within the SGO support services plan it will be provided for the child's minority unless anything changes.
- 3.7 There is no proposed change to how the Council responds to requests for an assessment of financial support. As with the previous policy, the updated Policy requires the Council to:
 - undertake a financial means assessment annually; or
 - when a special guardian requests financial support; or
 - when circumstances are known to change such as a child leaving an SGO carer
- 3.8 As a condition of this policy, and in keeping with the proposals contained in this report, all applicants must agree to be financially assessed and to be reassessed annually by the Financial Assessment and Benefits Team (FAB team) or if their finances were to significantly change before the next review was due.

Current policy amendments

- 3.9 The current policy was approved by Cabinet meeting on 15th October 2015 to confirm implementation in line with the SGO Regulations. The report set out proposals to consult on the standardisation of the allowance framework for Special Guardians by reviewing baseline Fostering Allowance.



- 3.10 Cabinet approved this Special Guardianship Policy for implementation with effect from 1 November 2015, the aim of which was to ensure consistency and transparency of support, including the introduction of a reduced two-year period of financial support instead of up to the child's 18th birthday, for all new SGO Carers approved after 1 November 2015. If exceptional circumstances applied, a business case for allowances to continue beyond two years for a further two years could be submitted to the Director of Children's Services (DCS).
- 3.11 The report at the time noted that the proposed changes were consistent with the relevant statutory requirements and case law decisions and did seek to avoid the situation that in seeking an SGO, there would be a financial dis-incentive. It was recognised that the proposal would limit financial support to Special Guardians to £19.2k (based on the estimated average cost before means testing).

Means testing arrangements

- 3.12 On 20 February 2017 (effective 9 April 2017), Financial Assessments, Income and Recovery Department (FAB) produced the policy 'Means Testing Assessment for Adoption, Special Guardianship, Child Arrangement and Residence Orders'.
- 3.13 This Policy states all carers subject to an Adoption Order, Special Guardianship Order, Child Arrangement Order or a Residence Order require a full means tested financial assessment.
- 3.14 The Policy applied principles from the standardised means test model – as issued by the Department for Education and Skills, and The Care and Support (Charging and Assessment of Resources) Regulations 2014 to ensure continuity across services within Portsmouth City Council and to ensure the assessment process is a fair and transparent model when assessing financial support for families. There is no proposed change to this model of assessment.

4. Reasons for recommendations

- 4.1 The Special Guardianship Financial Policy has now been reviewed to clarify and bring Portsmouth City Council in line with the legislative framework, other Local Authorities policies and the Department for Education and Skills 2018 recommendations, the Care and Support (Charging and Assessment of Resources) Regulations 2014.
- 4.2 The policy as it exists pays financial support to SGO carers for two years after an assessment, with an option to request a further two-year extension if agreed by the DCS. The new policy will pay financial support after assessment, until a child is 18 unless there is a change in circumstances, in line with the legislative framework.
- 4.3 It is proposed that the new policy be applied to all new and existing SGO carers, and to carers where the two-year payment has stopped since 2017 (should they respond to our correspondence and request a further assessment). Payments will recommence whilst an assessment is completed. Should the assessment show a need then payment will be backdated to the date it stopped and continue in accordance with the policy. To



date we have identified 45 carers where this may apply, and we will be writing to them to undergo a new financial assessment to determine whether they are eligible for any further financial support.

- 4.4 The impact of the policy is stated in the financial comments below and will bring a pressure to the current budget envelope. However, the benefits will be children living within their family and community with all the benefits that this brings, a reduced number of children being cared for by PCC requiring long term placements in foster care or residential care.

5. Integrated impact assessment

- 5.1 The integrated impact assessment is embedded as Appendix B

6. Legal implications

- 6.1 This new policy is a fairer reflection of the intention of the SGO Regulations from 2005 and their statutory guidance.

- 6.2 A failure to update and change the current SGO does expose the Council to the risk from challenge by way of judicial review in the event that one of the previous SGO carers whose payments were ceased following the 2 year cap.

- 6.3 Subsequent to the implementation of Council's original Policy in respect of the SGO there have been a number of notable Court judgments on this issue including that of *In B v London Borough of Lewisham* [2008] EWHC 738, (Admin), Black J held that the London Borough of Lewisham had failed to have lawful regard to paragraph 65 of the statutory guidance. Black J held that although the guidance did not have the force of a statute, "the local authority had a duty substantially to follow it unless there was good reason to do differently". Nothing that Lewisham had argued in the proceedings "comes close to justifying a radical departure". Putting the matter at its lowest, "a local authority is not free, in my view, to devise a scheme which fails to do what is required by regulation 6 or which dictates that some types of placement for a child carry a significant financial disadvantage in comparison with others or, worse, would impose such a financial strain on a carer that they would be forced to choose another type of placement".

- 6.4 Also the case of *R. (on the application of Becker) v Plymouth City Council* [2022] EWHC 1885 (Admin), which confirmed that a local authority's departure from the government model for special guardianship financial support means testing was unlawful because it failed to give reasons for having done so. The departure in this case had produced a material financial disadvantage to special guardians in the local authority's area.

- 6.5 In the circumstances and in light of the legislative framework and the updated case law it would be prudent for the Council to look to changing its policy to be more in line with the intention of the Statutory Guidance and to consider a retrospective review of those families that have been affected by the current policy.



7. Director of Finance's comments

7.1 The actual cost of the new policy will depend on the increases in SGO awards, the length of the individual arrangements and the financial assessments of the carers. The 2023/24 SGO budget was increased by £0.2m to cover these additional costs, and it is envisaged that the additional costs can be met within the current budget.

7.2 A further budget provision was also created at the end of the 2022/23 financial year to cover any additional costs with regards to any retrospective financial assessments. The financial implications of the policy should be monitored in line with normal budget monitoring procedures and action taken where necessary to ensure that costs stay within the overall budget.

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Signed by: **Sarah Daly, Director Children, Families and Education**

Appendices:

- Appendix A - Portsmouth Special Guardianship Order (SGO) Policy
- Appendix B - Integrated Impact Assessment

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

| Title of document | Location |
|-------------------|----------|
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The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on ...2 November 2023.....

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Signed by: **Councillor Suzy Horton, Cabinet Member for Children, Families and Education**