



Children and Families Select Committee  
16 September 2009

**Special Guardianship Allowances in Surrey**

**PURPOSE OF REPORT: Scrutiny of services and budgets**

For Select Committee to comment on proposals for a Special Guardianship Allowances Policy and to make subsequent recommendations to the Executive.

**1. INTRODUCTION**

1.1 The following paper was requested by the Select committee on 27.1.2009. It highlights specific issues in Surrey regarding Special Guardianship Allowances particularly in response to a legal ruling issued against Lewisham Council in 2008.

1.2 Special Guardianship Orders (SGO's) were introduced on December 30 2005 as part of the Adoption & Children Act 2002. They constituted the first new permanent legal order for children in over 30 years.

1.3 The use of SGO's in Surrey has been predominantly for Looked After Children placed with foster carers who wish to care for the child permanently, but do not wish to adopt, and for Kinship Carers who wish to permanently care for a Child known to them who is the subject of care proceedings to Surrey County Council.

**2. BACKGROUND INFORMATION**

2.1 An SGO is made as a result of an application by an individual to a Family Court or by the court of its own volition in other family court proceedings. If made, it means that the special guardian is given parental responsibility in relation to the relevant child. This responsibility can be generally exercised to the exclusion of any other individuals with parental responsibility, including the birth/legal parents. The intention is that the special guardian will then have clear responsibility for all the day to day decisions about caring for the child or young person and his/her upbringing.

2.2 There are two ways that the Council generally becomes involved in cases where SGOs are being considered.

2.3 Firstly, this may be an option within care proceedings, or where foster carers are applying to permanently care for children being looked after by the Local Authority. The Council will then be very involved in providing assessments and reports to the Court in such cases.

2.4 Secondly, an application may be made by a private individual where the local authority has had no previous involvement and the Court rules require the Council in such cases to provide a report to the Court to assist the Court in making its decision.

2.5 "Looked after children" is a term used in the Children Act 1989 which generally either refers to children subject to care orders (including interim orders) or children provided with accommodation by the Council under section 20 of the Act.

2.6 Since 2005, the use of Special Guardianship Orders in Surrey has increased, leading to a corresponding increase in the payment of Special Guardian's allowances. In addition to this during 2008, a Court judgement was issued against Lewisham Council ordering an increase in Special Guardianship allowances in order to match Fostering allowances. As this would lead to an increase in spending if implemented in Surrey, a review of the Special Guardianship Allowances Scheme has been completed.

Recommendations are highlighted in this report for Executive Committee scrutiny and approval.

### **3. USE OF SPECIAL GUARDIANSHIP ORDERS**

3.1 The breakdown of figures for the use of Special Guardianship orders is captured in Appendix 1.

### **4. CURRENT AND FUTURE SPECIAL GUARDIANS ALLOWANCE SCHEME**

4.1 The Council has a statutory duty under the Children Act 1989 to make arrangements in it's area for Special Guardianship support Services, and these regulations include the payment of financial allowances. (Appendix 2 refers).

4.2 The current scheme of allowances is complicated. There are four different categories of Special Guardians. Each of these has a different level of allowance and different systems of approval. (Appendix 3 refers).

4.3 Given the current changes to the law along with the need to simplify current processes, it is proposed that a new streamlined set of arrangements is introduced.

**Recommendations will focus on:**

- Streamlining the payments for Special Guardians
- Ensuring value for money and parity for special guardians with other permanent carers
- Offsetting the risks of legal challenge
- Making appropriate budgetary provision for the above.
- Ensuring that there is a clear policy, process and procedure for the assessment of post order support services for Special Guardians.

**5. CONCLUSIONS**

The key points are:

- There is an increase in Family and Friends Carers who become special guardians and this has led to an increase in the budget for “post order financial support.”
- In order for Surrey to be legally compliant, there is need to ensure that its special guardianship rates are paying sufficient regard to the amount of fostering allowance that would have been payable if the child was fostered.
- Fostering allowances and Special Guardianship allowances must be aligned.
- Adoption Allowances are paid at a lower level than the proposed Special Guardianship Allowances.

**6. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

6.1 The budget for fostering and adoption allowances for 2009-10 was created to cover SGO allowances. The cost of SGO allowances during 2008/09 with an increase for inflation was £612,850. This does not cover the increased expenditure in the proposed scheme (as referred to in appendix 3 ):

The proposed scheme is intended to:

- achieve parity between Special Guardianship allowances and residence order allowances
- to align SGO allowances to fostering rates to be compliant with the Lewisham judgement
- It is proposed that the increased rates of allowance will be paid to any new Special Guardians from the date that this allowance scheme is agreed by executive, and to existing Special Guardians within their next annual review process.
- To align the rates paid to special guardians who are not approved as foster carers,
- There is no capital budget for capital grants or loans for house extensions for Special Guardians for 2009/2010. Requests have been put forward by courts , but there is an urgent need for this to be robustly restricted for those special guardians where placement would not otherwise be possible.

- It is proposed that the increased rates of allowance will be paid to any new Special Guardians from the date that this allowance scheme is agreed by executive, and to existing Special Guardians within their next annual review process

## **7. EQUALITIES IMPLICATIONS**

7.1 Support Services assessments, of which financial allowances is a part , are a Social work process completed by Surrey Social Workers operating within Surrey procedures and as such are based on non-discriminatory practice.

7.2 The calculations for Special Guardianship Allowances are completed using the government format and are non discriminatory

7.3 If accepted, the recommendations of this report will remove outstanding discrepancies. (Appendix 4 refers).

## **8. RISK MANAGEMENT IMPLICATIONS**

8.1 Unless allowances are more closely aligned than at present, there is a risk that a Special Guardian will issue legal proceedings against Surrey County Council in order to receive an increased rate of SGO allowance.

8.2 The increase in the number of Special Guardianship Orders granted to Looked After children instead of Adoption Orders impacts on the budgets as follows:

- Financial support for Surrey adopters would emerge from the means testing process with a fairly modest financial allowance awarded to them. In contrast the evidence so far is that Family/ Friends/Kinship Carers who become Special Guardians, can belong to the section of the population who are on the lower income scale and qualify for state benefit. In general terms, means testing will result in increased expenditure and therefore it will cost the authority more to support SGO's then it does to support adoption.
- Capital improvement to domestic property to increase occupation in order to support an SGO is also likely to become a feature, when the overall costs of the SGO are less than an alternative arrangement .

## **9. Implications for the Council's Priorities or Community Strategy/Local Area Agreement Targets**

The Children and Young People's Plan identifies looked after children as a council priority. This policy will allow the carer's of LAC who become subject to a Special Guardianship order to receive remuneration that is legally compliant.

**RECOMMENDATIONS**

The payment of Special Guardianship allowances as outlined in the report be referred to the Executive for approval.

**NEXT STEPS**

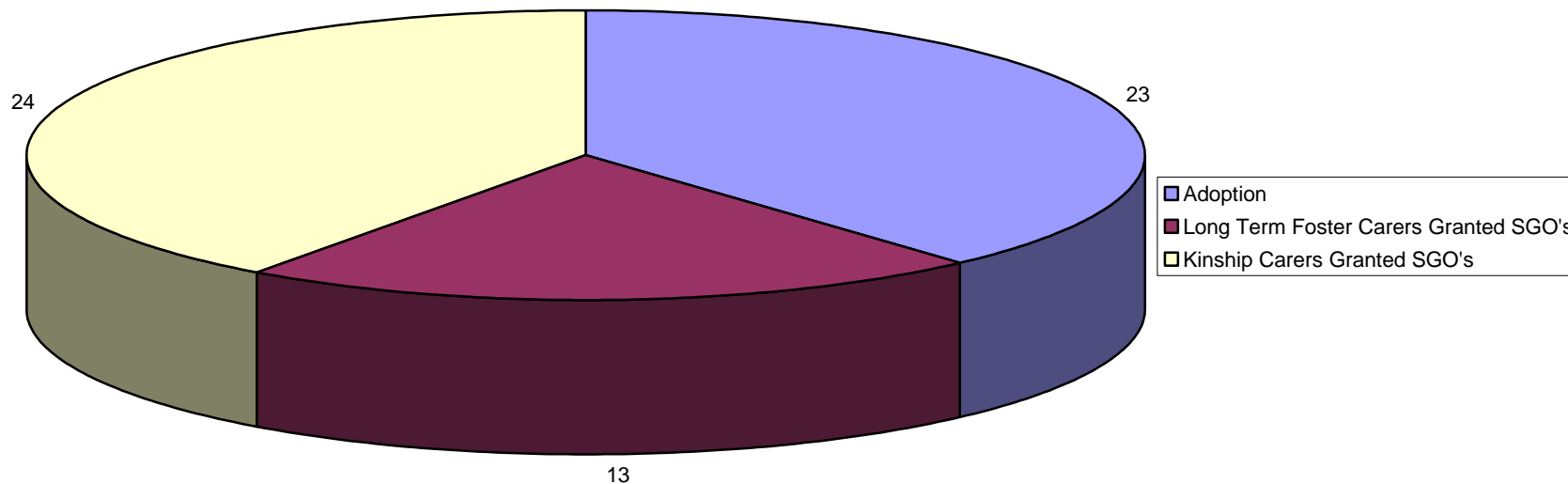
This paper to be presented to the County Council Executive in Sept 2009 to incorporate the above recommendations

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Sources/background papers:  
Adoption and children Act 2002 and subsequent regulations

**Pie Chart Illustrating the Breakdown of Special Guardianship and Adoption Orders granted between 1st April 2007 & 31st March 2008**



**Appendix 1**

## **APPENDIX 2**

The Local authority have a Statutory responsibility under the Children Act 1989 to provide Special Guardianship support services and allowances.

To include :

- ensuring that it provides financial support to special guardians where such arrangements are beneficial to the child's welfare.
- similar criteria for the payment of Special Guardianship allowances as for the payment of Adoption allowances,
- so that the special guardian can look after the child,
- or where the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of illness, emotional or behavioural difficulties or the consequences of past abuse or neglect.
- payment of legal expenses in court proceedings
- to contribute to the necessary expenditure for accommodating and maintaining a child including adaptations and alterations to property.

### **Payment is made:**

'Where the Local Authority consider it necessary to contribute to the expenditure necessary for the purposes of accommodating and maintaining the child, including the provision of furniture and domestic equipment, alterations to and adaptations of the home, provision of means of transport and provision of clothing, toys and other items necessary for the purpose of the child' (Special Guardianship Regulations 2005 Sect 6 Para 2(d)).

As in the case of Adoption Allowances, legislation dictates that in the case of existing approved Foster carers offering special guardianship to children placed with them in foster care, their pre-existing fostering allowances are protected at the fostering rate for a period of two years. The Local Authority can take the decision to continue this protection beyond 2 years should it 'consider it's continuation to be necessary having regard to the exceptional needs of the child or any other exceptional circumstances' (Special Guardianship regulations 2005 Para 7(2)).

Allowances will cease when:

- a. The child ceases to have a home with him.
- b. The child ceases full-time education or training and commences employment.
- c. The child qualifies for income support or job seekers allowance in his own right or
- d. The child attains the age of 18 unless he continues in full time education or training, when it may continue until the end of the course of training he is then undertaking.
- e. If the Special Guardian fails to submit the required annual Financial Assessment form by the notified deadline for that relevant year.





### Appendix 3 Existing and proposed Scheme for allowances paid to Special Guardians/ Adopters

	<b>Current Scheme</b>	<b>Proposed Scheme</b>	<b>Cost of Proposed Scheme</b>
3.0 Adopters	<ul style="list-style-type: none"> <li>▪ Means tested</li> <li>▪ Lowest rate payable @£96.18 per week for 5 – 10 yr old</li> </ul>	<ul style="list-style-type: none"> <li>▪ Maintain existing scheme</li> <li>▪ Maintain protected rates in accordance with previous agreements for special cases</li> <li>▪ Adoption is an irrevocable permanent order with statutory post order support services</li> </ul>	No change
3.1 Family and Friends Carers who become Special Guardians	<ul style="list-style-type: none"> <li>▪ Means tested</li> <li>▪ Same rate as Residence order allowances and higher than adoption rates</li> <li>▪ Rate is £ 162.89 per week</li> <li>▪ Not baselined to fostering out of London rates since 2004</li> </ul>	<ul style="list-style-type: none"> <li>▪ Align Special Guardian Allowances with out of London fostering allowances</li> <li>▪ Align Residence Order Allowances with out of London Fostering Allowances.</li> <li>▪ Proposed scheme would be compliant with judgement re Lewisham v B 2008</li> <li>• Maintain protected rates in accordance with previous agreements for special cases.</li> </ul>	Increase in expenditure of £10,535 per annum on existing SGO allowances. Increase in Expenditure of £63,603 per annum on existing residence Orders.
3.2 Existing Surrey approved and Independent foster Carers who become Special Guardians	<ul style="list-style-type: none"> <li>▪ not means tested</li> <li>▪ Fostering rates baselined to Inner London fostering rates</li> <li>▪ Fee element protected until child is 18 yrs old, although this is discretionary after first 2 years</li> <li>▪ Rate is £162.82 per week (under 11 years) £ 246.19 per week (over 11 years) plus £ 110.46 fee element</li> <li>▪ Higher rate than all other allowances</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislation would allow for rate to be means tested after 2 year protection period ceases, but proposal is that non means testing retained to offer incentive for foster carers to become Special Guardians</li> <li>▪ Allowance continues to be base lined to Inner London Fostering rates to retain competitiveness with other fostering agencies</li> <li>▪ Fee element only protected for 2 years unless exceptional circumstances prevail.</li> <li>▪ Weekly Rate would then be £162.82 for under 11 years and £246.19 for over 11 years</li> <li>▪ Impact would be a decrease in budget and a possible disincentive for foster cares to apply for an SGO</li> </ul>	<p>Nil Increase per annum, allowances remain unchanged.</p> <p>Projected Growth in SGO's is 3 per calendar month at a projected full year cost of £42,632 per annum.</p>
3.3 Special Guardians for Children deemed to be Children in Need	<ul style="list-style-type: none"> <li>▪ Paid as Family and Friends Carers above, but out of section 17 budget</li> </ul>	<ul style="list-style-type: none"> <li>▪ No assessment for post order support services unless child on threshold of becoming Accommodated or exceptional circumstances prevail</li> </ul>	£82,933 annum (Based on current number of SGO's granted to Family & Friends carers for CIN)
3.Special guardians who have no involvement with Social Care	<ul style="list-style-type: none"> <li>▪ No budget available</li> <li>▪ Court reports being written with some commitment for financial support</li> </ul>	<ul style="list-style-type: none"> <li>▪ No Assessment of child's needs to be provided unless exceptional circumstances prevail</li> <li>▪ If child does not meet threshold for Children In Need, then sign post to universal services and benefits</li> </ul>	Currently 2 families who receive payments of £25, 623 per annum

## APPENDIX 4

### Current Weekly Rates

### Means Tested Allowances

Age Band of Child	Surrey Foster Carers	Kinship Foster Carers	Special Guardianship - ex Surrey Foster carer Protected allowance rate	Special Guardian – Kinship carer	Kinship carer with residence Order	Adoption Order	Adoption Order for Child with Complex need
0-4	162.82	162.82	162.82	130.85	130.85	96.18	126.59
4-10	162.82	162.82	162.82	130.85	130.85	96.18	144.37
11-12	246.19	246.19	246.19	162.89	162.89	119.81	179.79
13-15	246.19	246.19	246.19	162.89	162.89	137.37	206.06
16-18	246.19	246.19	246.19	162.89	162.89	168.65	252.97
*Fee Element 1 <sup>st</sup> Child	110.46	Nil	110.46	Nil	Nil	Nil	Nil
Fee Element 2nd Child	88.34	Nil	88.34	Nil	Nil	Nil	Nil
Fee Element 3rd Child	66.36	Nil	66.36	Nil	Nil	Nil	Nil
Fee Element 4th Child	44.24	Nil	44.24	Nil	Nil	Nil	Nil
Fee Element 5th Child	22.12	Nil	22.12	Nil	Nil	Nil	Nil

Additional payments made to all approved Surrey Foster carers are:

- Birthday and annual Festival allowance equivalent to one weeks allowance for the child.
- Specific allowance of £110.46 per week paid for young people with a complex need or who are excluded from school.

\* Note: Fee element is paid to Surrey Foster Carers in recognition of their skills and the need to attend training and is a sliding scale payment based on the number of children in placement.

- Adoption allowances are paid at the lowest levels and are means tested
- SGO and Residence order allowances are paid at a slightly higher rate than Adoption allowances but are also means tested
- Fostering Allowances are not means tested
- Enhanced fostering allowances are not means tested and include the fee remuneration element.