

## **BMBC ADOPTION, SPECIAL GUARDIANSHIP AND CHILD ARRANGEMENTS (formerly Residence Order) ORDER ALLOWANCES POLICY**

This document is guidance only and will not be regarded as binding the Authority in any way as each individual case will have its distinct characteristics

### **Policy Statement**

Barnsley is committed to Permanence Planning for children (see Permanence Planning Policy and Procedure). Special Guardianship Orders (SGO) and Child Arrangements Orders (CAO) and Adoption Orders give carers parental responsibility, reduce the role of the local authority in the child's life and strengthen the commitment to the child as a member of the family. It is Barnsley's Policy that such orders should be considered in order to secure permanency for children where appropriate.

Where children, for whatever reason, are unable to live with their parents Barnsley Children's Social Care will seek to maintain and support them remaining with friends and family if it is assessed to be in their best interest. The service encourages the use of Special Guardianship Orders and Child Arrangements Orders in public and private law proceedings as an alternative to young people and children becoming or remaining looked after. When determining the most appropriate order, the least interventionist principle will apply provided that this is consistent with the child's welfare being the paramount concern.

This policy aims to ensure that all staff are aware of the options available to families under the Children Act 1989 to ensure that issues relating to where children will live can be resolved with minimum, or no, state intervention wherever possible.

Social Care staff are required to prepare a report to Court in respect of all Special Guardianship Applications. In cases arising from public law applications and some contested private law applications they may also be required to produce reports to support Child Arrangements Orders.

Special Guardians are entitled to request an additional assessment in respect of their support needs which may include the need for financial support. The Local Authority is not obliged to undertake this needs assessment but if it declines to do so it must submit its reasons in writing. Where they are not a birth parent the holders of Child Arrangements Orders are also able to request an assessment of their support needs which could include financial support.

If there is a request for financial support the initial assessment would be based on whether or not the child would meet the section 17 criteria and if they do then BMBC will undertake a financial assessment using the Department for Education and Skills Standardised Means Test Model for Adoption and Special Guardianship Financial Support. (It should be noted that Barnsley do not follow the guidance at section 8 of the standardised means test which suggests that carers receiving Income Support payments should not have the Child Benefit element deducted from the allowance. This would result in carers on Income Support receiving above the Department of Education recommended amount for the care of a child unlike other Special Guardians. Barnsley considers that to implement the guidance at section 8 would unfairly disadvantage working families who would receive the reduced amount over families in receipt of benefits who would receive the Child Benefit as an additional amount).

In Barnsley, Special Guardianship Allowances, Child Arrangements Order Allowances and Adoption Allowances are aligned as far as possible to ensure consistency and equity. However each Order does have some specific requirements which need to be considered with respect to that particular Order

## **Legislation**

- Children Act 1989
- Adoption and Children Act 2002
- Framework for the Assessment of Children in Need and their Families
- The Special Guardianship Regulations 2005
- Guidance on the Special Guardianship Regulations 2005
- The Special Guardianship (Amendment) Regulations 2016

## **Special Guardianship Orders**

### **Key points**

1. A Special Guardianship Order gives the Special Guardian parental responsibility but, unlike adoption, does not completely remove parental responsibility from the parents. However, a special guardianship order severely limits the parents' options to exercise their responsibility and should be viewed as providing legal permanence for children for whom adoption is not appropriate i.e. where the legal relationship of the child with their birth families should not be severed.
2. An SGO can provide an alternative means of providing a child in care with permanence.
3. An SGO provides a firm foundation on which to build a lifelong permanent relationship between the child and the special guardian.
4. Special Guardianship Orders can be made in circumstances where children are not looked after. In these circumstances, it would be via a private law application which appoints a person to be a child's special guardian. Applications can be made by:
  - Any guardian of the child,
  - A council foster carer with whom the child has lived with for one year immediately preceding the application providing this was itself within a three year period,
  - Anyone who holds a Child Arrangements Order in respect of the child
  - Anyone with whom the child has lived with for three of the last five years
  - Where the child is in care, anyone with the consent of the local authority
  - Anyone who has the consent of those with parental responsibility for the child
  - Any person who has the leave of the court to apply
5. The Special Guardian will have parental responsibility for the child and this may be exercised to the exclusion of others with parental responsibility. However there are restrictions e.g. a special guardian still requires either the written consent of every person who has parental responsibility, or leave of the court to cause the child to be known by a new surname or to remove the child from the United Kingdom for longer than three months.
6. A court may make a Special Guardianship Order in any family proceedings concerning the welfare of the child if they consider an order should be made, even where no application for a Special Guardianship Order has been made providing the recipient of the order is in agreement.
7. No Special Guardianship Order can be made without a report from the Local Authority supporting the suitability of the proposed Guardian(s).

8. A Special Guardianship Order ceases to have effect when a young person reaches 18 years old or when the order is revoked or superseded by another order e.g. Child Arrangements Order or Care Order.
9. Children who were in care immediately before the granting of a special guardianship order will qualify for advice and assistance under Section 24 (1A) of the Children Act 1989. This will be offered through Leaving Care provision. The qualifying determination does not apply to children subject to Child Arrangements Orders.
10. A special guardian can request an assessment of need for special guardianship support services (including a financial assessment) at any time after the making of a special guardianship order. This will be using the DfES Means Test model in accordance with Barnsley's procedure. (However please note previous comments in respect of Child Benefit and carers receiving Income Support payments)
11. In cases where the prospective special guardian is the child's foster carer, the court application fee and any legal costs incurred will be met by the Council if the Local Authority is supporting the application.
12. Legal costs incurred as a result of the special guardianship application must be met by the prospective special guardians if they are not foster carers, or if the application is via a private law application.
13. Special guardianship support services will only be provided following the completion of an assessment of need taking into consideration the individual circumstances of the case and the resources that are available locally.
14. Special guardians will be encouraged to access mainstream services wherever necessary.

## **Child Arrangements Order**

### **Key Points**

1. A Child Arrangements Order under Section 8 of the Children Act 1989 means an order settling the arrangements to be made as to who the child is to live with or have contact with and replaces the previous Residence Order and Contact Order. As such, the holder of a the Child Arrangements Order shares parental responsibility with parents with parental responsibility,
2. This parental responsibility will end when the order ceases, unless the person with the Child Arrangements Order is the unmarried father of the child.
3. It should generally be the case that Child Arrangements Orders should be mainly dealt with in private proceedings.
4. There will be times when a child accommodated under s.20 of the Children Act 1989 will be subject to a Child Arrangements Order. This will not be changed because of the provision of accommodation. In this situation, the social worker will need to be aware of the order and will have to take the requirements of the order into consideration in the care plan.
5. Workers need to be aware of the similarities and differences between SGOs and Child Arrangements Orders and make appropriate plans to promote the child's welfare in each set of circumstances.
6. Children's Social Care staff should be aware of the issue of Child Arrangements Orders when they are involved in care proceedings and need to be aware of the possibility of foster carers applying for such orders
7. There are occasions during the course of care proceedings when a Child Arrangements Order might be an appropriate recommended outcome for the child. These can sometimes be time limited.
8. It is possible to put forward a recommendation that involves the making of a Child Arrangements Order and a Supervision Order. Children's Social Care departments

can not make an application for a Child Arrangements Order but may support others in doing so.

9. An application for a Child Arrangements Order can be made for a child who is subject to a Care Order by those who are entitled to apply and, if granted, the CAO discharges the Care Order
10. CAOs give much of the decision-making in the child's life to the successful applicant. However this does not include the following:
  - the right to change the child's surname,
  - the right to remove the child from the country for more than 28 days,
  - the right to change the child's religion,
  - the right to agree or withhold agreement to adoption or the appointment of a guardian for the child.
11. Child Arrangements Orders normally last until the child is 16 but can be extended at the direction of the Court.
12. Child Arrangements Orders include elements of both where the child should reside and with whom they should have contact. They can exist in conjunction with other section 8 orders, specifically specific issues and prohibited steps orders, as well as in conjunction with supervision orders.
13. In circumstances where there is a Child Arrangements Order in force and the child is accommodated under section 20 Children Act '89 it should be noted that no other person with parental responsibility can remove that child from the accommodation without the agreement of the person with parental responsibility who held the residence aspect of the CAO.
14. It is not the role of social workers to offer support to people who are applying for Child Arrangements Orders unless the matter arises in Care Proceedings or a legal decision-making meeting and the Departmental view is that a CAO would be in the child's best interests.
15. When considering whether to support an adoption or special guardianship order application the social worker should have regard to the merits of a Child Arrangements Order in meeting the needs of the child and vice versa.
16. If an unmarried father of a child registered before 30/11/03 is given a Child Arrangements Order he will ordinarily also be given parental responsibility via a parental responsibility order. As a birth parent he will not be eligible for a CAO Allowance.

## **Adoption Order Allowances**

### **Key Points**

Adoption Order Allowances are defined by Adoption Support Services Regulations 2005

These regulations define the parameters within which allowances can be made. It should be noted that none of this is mandatory and the circumstances in which an allowance may be payable are very broad. Social Workers will need to consider and make the case for why each particular child meets the criteria.

### **Section 8: – Adoption Support Services Regulations 2005**

Circumstances in which financial support is payable

(1) Financial support is payable under this Part to an adoptive parent for the purpose of supporting the placement of the adoptive child or the continuation of adoption arrangements after an adoption order is made.

(2) Such support is payable only in the following circumstances—

(a) where it is necessary to ensure that the adoptive parent can look after the child;

(b) where the child needs special care which requires greater expenditure of resources by reason of illness, disability, emotional or behavioural difficulties or the continuing consequences of past abuse or neglect;

(c) where it is necessary for the local authority to make any special arrangements to facilitate the placement or the adoption by reason of—

(i) the age or ethnic origin of the child; or

(ii) the desirability of the child being placed with the same adoptive parent as his brother or sister (whether of full or half-blood) or with a child with whom he previously shared a home;

(d) where such support is to meet recurring costs in respect of travel for the purpose of visits between the child and a related person;

(e) where the local authority consider it appropriate to make a contribution to meet the following kinds of expenditure—

(i) expenditure on legal costs, including fees payable to a court in relation to an adoption;

(ii) expenditure for the purpose of introducing an adoptive child to his adoptive parent;

(iii) expenditure necessary for the purpose 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 looking after the child.

### **Section 9:- Remuneration for former foster parents.**

9. 1). Financial support may include an element of remuneration but only where the decision to include it is taken before the adoption order is made and the local authority consider it to be necessary to facilitate adoption in a case where –

a). the adoptive parent has been a local authority foster parent in respect of the child

b). an element of remuneration was included in the payments made by the local authority to the adoptive parent in relation to fostering the child

2) But that element of remuneration ceases to be payable at the end of the period of two years from the Adoption Order unless the local authority consider its continuation to be necessary having regard to the exceptional needs of the child or any other exceptional circumstances.

Payment of financial support may be made periodically if it is provided to meet a need which is likely to give rise to recurring expenditure or in any other case by a single payment or, if the local authority and the adoptive parent agree, by instalment.

Financial support ceases to be payable to an adoptive parent if:-

- the child ceases to have a home with him;
- the child ceases full-time education or training and commences employment;
- the child qualifies for income support or jobseeker's allowance in his own right; or
- 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 or training he is then undertaking.

## **FINANCIAL ARRANGEMENTS – SPECIAL GUARDIANSHIP, CHILD ARRANGEMENTS ORDER AND ADOPTION ORDER ALLOWANCES**

### **1. Specific Requirements of Individual Orders**

#### **Special Guardianship Support Services (including Financial Support)**

Local authorities have to make arrangements for the provision of special guardian support services which can include counselling, advice, information and financial support.

In cases where children are in the care of the Local Authority or were in care prior to the Special Guardianship Order at the request of the child, special guardian or prospective special guardian or a parent a support needs assessment **must** be undertaken.

Where a child has not been looked after, the child, the special guardian or prospective special guardian, a parent plus any child of the special guardian and any other person considered to have a relationship with the child concerned can request an assessment of their need for support services. Where the Local Authority makes a decision not to undertake an assessment, written notice must be given of the reasons for that decision after which 28 days are allowed for written representations. After this stage and should resolution not be achieved, the special guardian will have the opportunity to pursue any further challenge through the Local Authority Complaints process.

Support services can cover:-

- Assistance in accessing local, universal services for example, health, education, universal benefits and tax credits)
- Advice and help to all those involved with the child
- Advice about contact with parents and other family members
- Access to therapeutic or other services for the child
- Assistance in developing the relationship between the special guardian and the child, including parenting, respite care and practical support
- Time-limited financial support which is subject to means testing
- A regular allowance

Special Guardianship Allowances would only be paid where the child would otherwise be in the care of the local authority and without such a payment the child would experience significant hardship or the child has particularly complex needs.

Special Guardianship Allowances will normally only be considered where the Order has been made as the outcome of Public Law Proceedings.

### **Child Arrangements Order Allowances – Public Law Proceedings**

Child Arrangements Orders replace Residence Orders which were introduced by the Children Act 1989. Child Arrangements Order Allowances are discretionary and there is no national guidance regarding amounts or eligibility criteria.

Barnsley Council sets the following criteria for the payment of Child Arrangements Order Allowances:-

1. If the outcome of Care Proceedings is the placement of a previously 'looked after child' with a relative or friend of the family subject to a Child Arrangements Order.
2. If the child has previously been looked after and would need to be again, save for the payment of a Child Arrangements Order Allowance as part of the support to a Child Arrangements Order
3. If, without a Child Arrangements Order and the payment of the allowance, the child would suffer significant hardship or need to be looked after, for example where the care of the child would necessitate the carer giving up paid work or where the child has significant additional needs.
4. Child Arrangements Order Allowances are never paid to birth parents

Child Arrangements Orders cease when a child reaches 16 but can continue if determined via the court process at the time of making the order, if "the circumstances of the case are exceptional." Exceptional circumstances are normally where the young person has severe and complex physical needs and requires special care.

### **Adoption Order Allowances – as defined by Adoption Support Services Regulations 2005**

See previous section for circumstances in which an Adoption Allowance can be paid.

### **Adoption Allowances in Barnsley**

**There are two main points in the adoption process where an allowance should be considered:-**

**The first of these is at the ADM meeting where a decision is made that a child should be adopted.**

In circumstances where any child is likely to be hard to place, for example where we are aiming to place a number of siblings together or where a child has particularly complex needs, then the child's social worker together with their Team Leader and with advice from the Adoption Team should be considering whether or not an allowance should be offered.

A recommendation regarding the payment or non-payment of an allowance should be included in the final paragraph of the Child Permanence Report submitted to the ADM. This paragraph must include a recommendation either for or against bearing in mind that circumstances may change as the move to adoption progresses.

The ADM decision-making should include a reference to the decision whether or not to pay an allowance.

The purpose of decision-making at this point would be to add to the information regarding the child for family-finding and it could have implications regarding the success or not in finding suitable carers.

**The second point to consider an adoption allowance is the Panel where the match is recommended.**

The Adoption Support Plan should include a recommendation regarding the payment or not of an Allowance. At this stage more may be known about the child's needs making it apparent that they will need an allowance for the placement to be successful or more may be known about the adopters and their support needs in order to make the placement successful.

The decision to include a recommendation or not will be a joint decision involving both the Child's Social Worker and the Family-Finder.

The Adoption Support Plan must include a recommendation either for or against the payment of an allowance.

At the stage the recommendation should include an appraisal of the carer's income and outgoings to the extent that there is an understanding of whether or not they will need financial assistance and the cost of any special needs in relation to the child's care. Any assessment should include the broader support needs of the carer and child not just the need for a financial allowance. The actual D of E financial assessment should not be used at the stage. A request for a formal Financial Assessment can only be made from the Placement Sufficiency Oversight Panel (PSORP) once the Panel has confirmed that an allowance will be paid.

The Adoption Panel as part of the matching will make a recommendation to the ADM will based on the Adoption Support Plan regarding as to whether or not an allowance should be paid.

**Once the matching decision has been made by the ADM and includes a recommendation for an allowance the child's social worker should complete the PSORP referral form and make an appointment at PSORP for ratification and formal agreement to make the payments to these specific adoptive parents.**

## **2. How Allowances are calculated.**

In Barnsley the payment of SGO Allowances, CAO Allowances and Adoption Order Allowances are aligned as far as possible to ensure fairness, simplicity and consistency. However as noted previously each Order does have some specific requirements which must be addressed separately.

DfES guidance on Special Guardianship and Adoption Order Allowances recognises that payment structures will be linked to local variations in the cost of living and individual local authority budgets. The DfES recommends that adoption and special guardianship maximum payments do not exceed fostering allowances, are means-tested and that payments in individual circumstances should be determined by the needs of the child.



Payments in Barnsley are based on the National Foster Care Minimum Standards, they are age banded, uplifted annually from the first of April each year and subject to an assessment based on the DfES Means Test. The Barnsley Assessment is based on the DfES Means Test but as noted above does not incorporate the inclusion of Child Benefit within the payment made to carers on Income Support as recommended in section 8 of the guidance.

Financial support will stop being paid if/when:-

- The child ceases to live with the carer with a CAO or SGO
- The child ceases full time education or training and commences employment
- The child qualifies for Income Support or Jobseekers Allowance in his/her own right
- In the case of a CAO when the child attains the age of 16 unless the order has been extended until the age of 18.
- In the case of a CAO which continues to 18 if the child continues in full time education or training payment may continue until the end of the term in which they are 18.

Financial support ceases to be payable to an adoptive parent or an SGO carer if:-

- the child ceases to have a home with him;
- the child ceases full-time education or training and commences employment;
- the child qualifies for income support or jobseeker's allowance in his own right; or
- 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 or training he is then undertaking.

All requests for Allowances must be considered by at PSORP. The child's social worker should complete the referral form which should be signed off by their Service Manager and considered at the next available PSORP. In most circumstances the social worker will not need to attend the meeting but there may be occasional circumstances where further details are required and the worker will be asked to attend.

Where requests for Allowances fall outside this policy, such as where Independent Fostering Agency (IFA) carers or local authority carers are unwilling to accept a reduction in allowances but where it is clearly in a child's interest to leave the looked after system, the child's social worker will prepare a report and present it to PSORP. Whilst decisions in such cases might result in differentiated payments, legal advice has confirmed that each case must be considered on its merits and Court Statements should detail the reasons for particular decisions. It will remain the case that these should be exceptional payments requiring specific justification.

Financial support does not normally include the payment of remuneration to a special guardian for the care of the child however former foster carers can continue to receive the element of remuneration included in the foster carer rates for two years from the date of the making of the special guardianship order. These payments can continue for longer than two years if the local authority considers it appropriate.

In the case of former local authority foster carers who become adopters an adoption order allowance can include an element of the remuneration payment for up to two years. This can continue beyond the two years if the Local Authority considers it appropriate.

Any applications outside the usual policy will be the subject of a written report to PSORP and be agreed by the Director for Children's Social Care.

### 3. Accessing Allowances

In order to access allowances one of the following actions must be completed.

- A Special Guardianship Assessment should have been completed and an additional assessment of support needs recommending the payment of an allowance.
- A Child and Young Person's Assessment should have been completed detailing why this child would suffer significant hardship or become looked after if a CAO was not made and the specific additional needs of the child or carers which require the payment of an Allowance.
- A Care Plan recommending a Child Arrangements Order and the payment of an Allowance
- An Adoption Support Plan including a recommendation of the payment of an Allowance.

All the above must include a full assessment of the carer's income and outgoings and the cost of any special needs in relation to the child's care. Any assessment should include the broader support needs of the carer and child not just the need for a financial allowance.

A recommendation to PSORP must be made with a supporting recommendation from the relevant Service Manager, based on Section 17 eligibility criteria, prior to any decision being made by Panel as to whether or not the request for an allowance should be approved.

Carers should not be asked to submit details for the DfES means test until Panel has agreed that an allowance should be paid. The test will then determine how much should be paid. The test should **not** be used to determine whether or not an allowance should be paid.

Service Managers, again based on application of the Section 17 eligibility criteria, can recommend one off payments. These should also be agreed by PSORP. The DfES means test (excluding section 8) will be applied in these circumstances.

Any decision **not** to undertake an assessment of support needs requested by a Special Guardian must be made by a Service Manager and endorsed by PSORP. These requests will normally be made for SGOs made under private law proceedings and can be made at any time once an SGO has been made. Applicants must be informed in writing and then have 28 days within which to respond to this decision. Any disputed decisions which cannot be resolved will be processed through the BMBC Complaints Procedures.

Where children are subject of public law proceedings, irrespective of whether or not they have been looked after, and require permanent placements which are achieved via CAO or SGO they will be eligible for a Means Tested Assessment of Allowances.

Child Arrangements Orders normally end at 16 and the allowance can be paid until the end of the school year (year 11). In exceptional circumstances CAOs can be extended to the age of 18 and if payments are to be continued confirmation must be provided by the carers that the order continues to 18.

All Special Guardianship orders last until 18 and consequently allowances can be paid for the duration of the order (subject to the conditions in Appendix A). Where the child is in full-time education payments can continue until the end of the course they are currently on at the age of 18.

Adoption Order Allowances continue until the child is 18 and where the child is in further education at 18 can continue until the end of the course.

#### **4. Length of time to pay allowances**

Recommendations can be for a limited period with a review or for the entire period until the child is 18 (or the end of the full-time education course they are on aged 18).

For former foster carers payment including remuneration can be extended beyond the 2 years as detailed in the regulations but workers need to consider the specific needs of the individual children. Allowances for foster carers were introduced to encourage foster carers to offer permanent placements to children who had been in their care for some time and would be otherwise hard to place. Adoption Allowances and SGO Allowances for former foster carers are not means-tested unlike all other Allowances to encourage carers to offer permanent placements rather than children continuing to be looked after. Foster carers offering to adopt or take SGOs regarding very young children are not considered to warrant an allowance unless there are a number of siblings where the ideal option would be to keep them all together.

One-off payments can also be requested or specific amounts to pay for school fees etc. It is not a requirement just to provide a regular allowance although this is the main way carers are currently financially supported.

Adopters and Special Guardians can ask for financial assistance at any time during the child's childhood so this is not a once and for all decision. Carers with a child arrangements order can also ask for financial support at any time although unless this is a decision at the end of care proceedings any payments would be one-off payments under section 17.

Allowances were created to cover the additional costs of caring for children with complex needs and should cover such things as excessive wear and tear on clothes and furniture, bigger cars, costs of additional care, additional therapy and so on. However adopters and special guardians (where the child was previously a 'looked after child') currently also have access to the Adoption Support Fund which will help with therapy for the children and support for parents. The ASF can be accessed at any time once the children are placed with adopters; an Adoption Order does not need to have been made. However it is not clear how long the ASF will continue to be available

Allowances are reviewed and re-assessed on an annual basis by BMBC Financial Services but this does not include a home visit or any assessment of the child's current circumstances – there is limited capacity for review of Adoption and SGO Allowances through the Adoption Support and Special Guardian Support workers.

#### **4. Additional Factors**

Support with Legal Costs

It may be appropriate to contribute to any legal costs including court fees, of a special guardian or prospective special guardian associated with-

- The making of a special guardianship order or any application to vary or discharge such an order
- The application for an order under section 8, either a specific issues or prohibited steps order
- An order for financial provision to be made to or for the benefit of the child

Adopters in certain situations are also entitled to request support with legal fees.

Any payment of legal fees in respect of a special guardianship or adoption order cannot be means-tested.

In respect of payment of legal fees to support a CAO application the authority would only do so where the applicant is not eligible for Legal Aid, the authority is supportive of the application and there has been a Legal Decision-Making Meeting which has recommended that the carer apply for such an order in order to prevent the child coming into the care of the Local Authority

## **5. Responsible Local Authority**

### **Special Guardianship**

The assessment and provision of services for the child, the special guardian and any children of the special guardian all remain the responsibility of the local authority where the child was last looked after for three years from the date of the order. This rule applies wherever the family live during this period. If the family do move during the three years or there is any other significant change in their circumstances the local authority may wish to undertake a re-assessment and alter the support plan accordingly, including any contact arrangements that are part of the plan.

When the three year period has expired the local authority where the special guardian lives is responsible for assessing and providing support services. This is the same position in respect of the provision of adoption support services.

A distinction is made between ongoing financial support (financial support that is paid on a regular basis) which was agreed before the special guardianship order was made and other support services. The assessment and provision of such financial support will remain the responsibility of the local authority who originally agreed it for as long as the family in question qualify for payments. This distinction has been made because financial support can be paid without direct contact.

### **Child Arrangements Orders**

In respect of CAO Allowances if a family in receipt of such an allowance moves out of the Borough we should approach the new local authority to ascertain whether the family fits their criteria for the payment of an allowance and whether or not they would be prepared to take over the payment of the allowance.

If a family move into the Borough and are in receipt of a CAO allowance from another authority the allowance should end and BMBC should assess whether or not they meet the local criteria for the payment of a CAO allowance.

## **Adoption Order Allowances**

If an allowance was agreed at the point the Adoption Order was made responsibility for financial payments remains with the Local Authority responsible for the child at that point. However adopters can request an assessment for adoption support which could include a financial element at any time during the child's childhood. After 3 years from the date of the Adoption Order the local authority where the child resides becomes the responsible authority.

## **5. Care leavers**

Those children and young people who have been 'looked after' prior to the making of a Special Guardianship Order may qualify for access to financial support and leaving care services.

In the context of Special Guardianship to qualify for advice and assistance section 24(1A) of the Children Act 1989 provides that the child must:

- Have reached the age of 16 but not the age of 21
- If less than eighteen years old, have a special guardianship order in force
- If eighteen years old or above, have had a special guardianship order in force when they reached that age, and
- Have been looked after by a local authority before the making of the special guardianship order

The relevant local authority should make arrangements for children who meet these criteria to receive advice and assistance in the same way as for any other child who qualifies for advice and assistance under the Act as amended. Regulation 22 provides that the relevant local authority is the one that last looked after the child.

## Appendix A –

### Special Guardianship Information

The following individuals may apply for a Special Guardianship Order:-

- Any guardian of the child
- A local authority foster carer with whom the child has lived for 1 year or more immediately preceding the application
- Anyone who has a Residence Order in respect of the child or has the consent of all those who hold Residence Orders
- Anyone with whom the child has lived for three out of the last five years where the child is Looked After, any person who has the consent of the Local Authority
- Anyone who has the consent of all those with parental responsibility for the child and
- Any person, including the child, who has the Court's leave to apply
- Additionally, the Court may make an order in any family proceeding where it feels that to be appropriate.

Although parents can apply to Court for leave to discharge a Special Guardianship Order, the Court has to be satisfied there has been a significant change in circumstances since the Order was made.

Children cannot be known by a new surname without the Court's leave and the child cannot live abroad for more than 3 months.

### Support Services

Those subject of Special Guardianship Order are able to request an assessment for support services and those who have been Looked After have access to financial support and Care Leaving Services, qualifying for 'advice and assistance' between the ages of 16 and 20 from the Local Authority which last looked after the child.

Children who have been previously looked after **must** receive an assessment for support services (which should not just include financial support) whilst other children and adults may request a needs assessment. Where a decision is made not to undertake an assessment, written notice must be given of that decision.

Provision of services (other than periodic payments) must be reviewed when a change of circumstances arises but at least annually.

The principle in relation to financial support is that financial issues should not be the sole reason for Special Guardianship arrangements failing. Any local authority financial support is disregarded in relation to the calculation of benefits and tax credits.

When undertaking an assessment in relation to financial support, Special Guardians must demonstrate that they have accessed all appropriate benefits.

The regulations require the local authority to operate a 'means test' by considering:-

- Financial resources including savings, benefits, tax credits but not housing investment
- Reasonable outgoing and commitments
- Financial needs related specifically to the child and any resources of the child such as Child Trust Funds

The regulations also give the local authority discretion to disregard the means test in the following circumstances:-

- Initial costs of providing accommodation for a child who has been looked after
- Recurring travel costs related to contact
- Where special care is needed because of illness, disability, emotional or behavioural difficulties
- Where consideration is being given to include an element of remuneration payments to carers who have formerly looked after the child on a fostering basis

This means test has to be disregarded when financial support is considered in relation to legal costs to make the application (or to vary an order) where the local authority supports the application. The local authority is not expected to meet the costs when it does not support an application or in non-looked after cases.

Conditions can be attached to financial support (including timescales and purpose) and where there is non-compliance, payments can be suspended or terminated and local authorities can seek to recover all or part of the financial support they have paid.

Special Guardians must be informed in writing of the conditions, which apply, and they must notify local authorities:-

- Of any changes of address
- If the child dies or ceases to live with them
- If the child ceases education, training or commences employment
- If the child qualifies for Income Support or Job Seekers' allowance and
- Any change in their personal financial circumstances
- Supply local authorities with an annual statement regarding their financial circumstances and the needs and resources of the child

## STANDARDISED MEANS TEST MODEL FOR ADOPTION AND SPECIAL GUARDIANSHIP FINANCIAL SUPPORT

### Introduction

1. The Department for Education and Skills has developed a model means test for adoption and special guardianship financial support. The model has been tested with various local authorities and modifications made as a result.
2. **Please note that this test is a suggested model only.** It is not a statutory requirement for local authorities to use this model in place of their existing system. However, we do recommend its use by local authorities, as we believe that the model developed is fair and that adoptive or special guardian families would benefit from a consistent approach by local authorities.
3. The model proposed is intended to deliver a standard approach to arriving at adoption support or special guardianship support payments (if not always a standard payment), so that adopters and special guardians are treated equitably within the context of what is affordable within existing local authority budgets.
4. For any queries about the model, please contact the Adoption Team on [adoption.team@dfes.gsi.gov.uk](mailto:adoption.team@dfes.gsi.gov.uk).

### Guidance on using means test model

#### *General*

5. The model is based on disposable income, and so provides a thorough analysis of the family's financial situation. Key principles of the test are set out in this section.
6. The regulations on adoption and special guardianship support services<sup>1</sup> set out that there must be no reward element in financial payments other than as a transitional provision for foster carers adopting or becoming special guardians for a child for whom they are currently caring.
7. The overall approach used in the test is a 'snapshot' of the family's current circumstances. By this, we mean that if the adopted or special guardian child is already living with the prospective adopters or adoptive parents/special guardian, then the child should be included in the calculations. If the child is not yet placed with the prospective adopters/special guardian, then the child should not be included in the calculations.

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<sup>1</sup> The Adoption Support Services Regulations 2005 (SI 2005/691) and the Special Guardianship Regulations 2005 (SI 2005/1109) both available at [www.opsi.gov.uk](http://www.opsi.gov.uk).



8. If a family is in receipt of Income Support, we recommend that the local authority pay the family the applicable maximum payment without assessing their income/expenditure in this test. The figure paid to the family should not include any deductions for child benefit (as they are in receipt of Income Support).
9. Financial support paid to adoptive parents or special guardians under the regulations cannot duplicate (or be a substitute for) any payment to which adopters or special guardians would be entitled under the tax and benefit system. We recommend that local authorities only include benefits that are currently being paid to members of the household. If the local authority believe that there are other benefits to which the household would be entitled, this should be pointed out to the adopters or special guardian. A reassessment after 3 months could then be made which would capture all of the new benefits being received. This could be the case where, for example, a child has recently been placed with the prospective adopters or special guardian, and they have not yet claimed child tax credit.
10. The test is currently worked out on a monthly basis. If local authorities prefer to use weekly figures, the model can be adapted for this.

## *PROJECTED FAMILY INCOME*

### *Section 1i - Pay*

11. This section should include basic net monthly pay, before any deductions for savings schemes, social clubs, accommodation/food and loans. However, the income figure used should exclude any payments into pension funds.
12. Where one (or both) of the parents or special guardian is self-employed, the only income which should be considered is 'drawings' as this is the equivalent of pay from an employer. Any profit from the business sitting in a bank account (and thereby not being reinvested) should be taken into account as capital under section 1iv: other sources of income.
13. If one (or both) of the parents or special guardian receives overtime, fees, bonus/commission and/or gratuities on a regular basis (for example annual bonuses) should be included as part of the monthly payment (i.e. if the payments are annual, these should be divided by 12 to give a monthly amount to be included in the 'basic net monthly pay' section). If local authorities are using weekly figures, the extra income should be calculated on this basis.

### *Section 1ii – Benefits and pensions (parents)*

14. Where the parents or special guardian receive individual benefits (i.e. those that are not calculated on a household basis) these should be included in this section. If the benefit payments are currently received weekly, please multiply by 52 and divide by 12 to give a monthly amount. Benefits to be entered in this section are:

- Employer's sick pay (after compulsory deductions)
  - Incapacity benefit
  - Statutory maternity, paternity and/or adoption pay and/or maternity allowance
  - Bereavement benefit
  - Working tax credit (if paid directly and not as part of pay and excluding any childcare element received)
  - All pension payments received
  - Other benefits
15. In relation to working tax credit, our understanding is that an employed person currently receives working tax credit within pay from his employer. If this is the case, the amount will be included in the basic net monthly pay section. All those who receive working tax credit will receive an award notice which sets out how much they will receive. This award notice will provide the information needed for this section of the test.
16. Where a childcare element is paid as part of the working tax credit, this should be disregarded for the income section of the test. The existence of this type of credit needs to be considered when completing the expenditure section on childcare (see below).
17. Any other benefits received by the parents, for example help with costs associated with disability or mobility, should be recorded in the 'other benefits' section.

*Section 1iii – Benefits (family/children)*

18. Where benefits are received by the family or household, as opposed to being paid directly to the parents, they should be recorded in this section. This is primarily for benefits which are calculated on the basis of household composition. Benefits to be included in this section are:
- Income Support
  - Jobseeker's Allowance
  - Child tax credit per household
  - Child benefit for each child, excluding the child/children who are the subject of this assessment application
19. If a member of the household receives Income Support or Jobseeker's Allowance, the amount per household should be recorded here. Also see paragraph 8 above, where it is recommended that where the only income families receive is Income Support, the applicable maximum payment should be made to the family.
20. Benefits which should be included in this section are child tax credit received for each child, at the time that the test is applied. All those who received child tax credit should receive an award notice setting out how much they will receive.

21. Child benefit should be included for each child living in the household, excluding the child/children who are the subject of this assessment application. Current rates for child benefit can be found by clicking [here](#).
22. Housing benefit should also be excluded from this section, as it is disregarded for the purposes of the expenditure section below.

*Section 1iv – Other sources of income*

23. Where the family receive income from capital, savings and/or investments, this should be assessed in terms of net monthly interest only, as paid. This is the income that is routinely available to the family, and should be clearly shown on statements/similar. Any interest received from Government Child Trust Funds should not be included in this section.
24. If the family receive income from boarders/lodgers, this should be calculated on a weekly basis (then multiplied by 52 and divided by 12 to give a monthly amount if the test is being completed on a monthly basis). To calculate the weekly income, all weekly payments for board and lodging must be added together, a £20 disregard applied and then 50% of any excess over £20 for each person deducted. This is how income from boarders/lodgers is calculated for income support purposes.
25. Examples of the approach for income from boarders/lodgers are as follows:

**Boarder/lodger 1**

Weekly payment	£55
Deduct £20 (disregard)	-£20
	£35
Deduct 50% of remainder	-£17.50
<b>Income from boarder/lodger 1</b>	<b>£17.50</b>

**Boarder/lodger 2**

Weekly payment	£60
Deduct £20 (disregard)	-£20
	£40
Deduct 50%	-£20
<b>Income from boarder/lodger 2</b>	<b>£20</b>

26. Where the family receive income from rent on an unfurnished property, this should be calculated on the following basis: monthly income received in rent after the deduction of any costs. Deductions can be made for:
  - Interest payments on the mortgage (but not mortgage capital payments);
  - Repairs;
  - Council tax (if paid by the family being assessed)
  - Agents' fees; and
  - Insurance (buildings)

27. If income is received from furnished properties, the same calculation applies as above for unfurnished property, but an extra 10% deduction from the monthly rent received can be made as a 'wear and tear allowance'.
28. The approach used in paragraphs 25 and 26 above is consistent with that used for calculating income from property for the purposes of income tax. If the person who is the subject of the assessment has completed a recent tax return, local authorities may ask to see a copy of this. The tax return should have the information needed for this section of the test.
29. Other income to take into consideration includes maintenance payments received for any child in the household and existing adoption or special guardian allowances (including enhancements for special needs) paid for any child. This latter may be paid where, for example, the family have adopted or become a special guardian for a child with a different local authority and therefore receive a separate allowance.

*Section 1v – Income relating to the child/children being adopted or becoming a special guardian child*

30. This section relates to the child/children being adopted or becoming a special guardian child only. Any regular interest on capital and/or income in which the child/children has a legal interest and entitlement should be included here. This could be, for example, a savings account, trust fund, property or other legacy.
31. Payments from Criminal Injuries Compensation Awards should not be included. Any interest received from Government Child Trust Funds should not be included in this section.
32. Please also consider any other income to which the child/children might be entitled. This section does not record child benefit for the adopted or special guardian child, which will be deducted from the final payment resulting from this means test.

*Income calculation*

33. The means test spreadsheet will automatically calculate the household monthly income, and will also apply a 20% disregard to this income figure.

**PROJECTED FAMILY EXPENDITURE**

*Section 2i – Home expenditure*

34. This section should include mortgage payments, made up of capital and interest, and also including any endowment payments linked to the mortgage. If the family pays rent, the monthly amount actually paid should be recorded here, after any deductions made for housing benefit. The only other outgoing which should be included in this section is council tax paid; this should be the amount paid after the deduction of any council tax benefit received by the

household or discount for single adult households or second homes.

*Section 2ii – Other outgoings*

35. Where the family pay regular monthly repayments on loans for housing improvement (e.g. extensions/new kitchens) or transport costs (e.g. new car), we suggest that these are included in this section. Local authorities will need to decide in relation to the individual circumstances as to whether a loan repayment should be included here. Some loans may have been taken out by the adoptive or special guardian family to meet a new need incurred as a result of the adoption or special guardianship order (e.g. buying a larger car).
36. Other payments which can be included in this section include maintenance payments, payments relating to court orders, private pension contributions and national insurance if self-employed or not working.
37. The section for 'reasonable' child care costs will need to be determined by each local authority depending on (a) the circumstances of the family in question (e.g. how many hours the parents work); and (b) local costs for child care services. Costs recorded in this section should be those paid after any childcare element paid as part of the parents' working tax credit. All those who receive working tax credit will receive an award notice which sets out how much they will receive.

*Section 2iii – Core regular family expenditure*

38. General household expenditure on items such as food, transport, clothes, recreation should be calculated using the Income Support allowance rates, but increased by 25%. The latest rates can be found by clicking [here](#). The calculations below are based on the rates for 2005-6 as an indication:

<b>Personal Allowance</b>	<b>Normal monthly rate</b>	<b>125% of normal monthly rate (for use in this means test)</b>
Single adult aged 16-17	£146.68	£183.35
Single adult aged 18-24	£192.83	£241.04
Single adult aged 25 or over	£243.53	£304.41
Couples both aged 18 or over	£381.98	£477.48
Lone parent aged 16-17	£146.68	£183.35
Lone parent aged 18 or over	£243.53	£304.41
Dependent children	£190.15	£237.69

39. In completing the means test, local authorities will need to calculate the appropriate figure for the family being assessed. For example, for a household with a couple (parents) and 2 dependent children the core regular family expenditure should be recorded as £952.86 (made up of couple's allowance of £477.48 and 2 allowances for dependent children of £237.69 each).

**CALCULATION**

40. The spreadsheet will calculate the household's monthly disposable income.
41. Local authorities will need to enter the appropriate maximum payment for the household, depending on the number and age of the child/children being adopted or becoming special guardian children, and the circumstances of the child e.g. special needs.
42. We understand that most local authorities will have a payment structure for fostering allowances consisting of a core allowance paid for all children, plus enhancements linked to, for example, special needs. This payment structure will be linked to local variations in the cost of living and individual local authority budgets. We recommend that adoption and special guardianship maximum payments are tied to these allowances. This would result in a different maximum payment in individual cases, determined by the needs of the child, against which amount the test is run.
43. After the local authority maximum payment has been entered manually, the box marked 'amount of payment to adopters or special guardian' will show the payment that the test has calculated for adopters or the special guardian. This amount is calculated on the following basis:
  - Where the family's disposable income is less than £0, the spreadsheet will show the local authority's maximum payment. This is because the adopters or special guardian have provided evidence via the disposable income calculation that shows they do not have the means to accommodate any further expenditure.
  - Where the family's disposable income is higher than £0, the spreadsheet will calculate a figure that is a percentage of the maximum payment. As the disposable income figure rises above zero, the percentage of the maximum payment that the adopters or special guardian be tapered at a set rate of 50%. This rate means that for every pound of monthly disposable income a family is found to have, they will have 50 pence deducted from the monthly maximum payment.
44. We understand that many local authorities determine payments to adopters or special guardians based on the allowances they pay foster carers, and then deduct child benefit from the final amount. This is to reflect that child benefit can be claimed by adopters and special guardians but not foster carers. The appropriate amount of child benefit for the child/children who are the subject of the test should be entered into the spreadsheet. Please note that the maximum payment used to calculate the payment to adopters should not take into account any child benefit the adopters might receive (i.e. should not deduct it) as the spreadsheet allows the child benefit to be deducted after the payment has been calculated.
45. The final payment shown will be the calculation of the means test minus child benefit entered by the local authority.