POLICY FOR THE PAYMENT OF SPECIAL GUARDIANSHIP AND CHILD ARRANGEMENT ORDER ALLOWANCES

Date of Ratification – 2nd October 2015
Next Review date – September 2016
1 Introduction

1.1 This Policy, procedures and the financial assessment forms have been updated following a review and consultation with Special Guardians and Guardians of children subject to a Child Arrangement Order. The Review was undertaken to consider changes following similar reviews that already taken place on a regional and national level.

1.2 The aim of this policy is to provide a level of financial support to carers, so that the financial hardship that may be suffered as a result of the making of a Special Guardianship Order or a Child Arrangement Order (formerly Residence Order), is significantly reduced.

2 Legal Framework

Oldham Council’s approach to financial and other support is governed by the applicable legal framework, as follows:

2.1 Special Guardianship

2.1.1 Special Guardianship Orders are made under S14 A to F of the Children Act 1989 (as amended by Section 115 of the Adoption and Children Act 2002). S14F governs duties in relation to support services.

2.1.2 Regulations 6 to 10 of the Special Guardianship Regulations 2005 and the accompanying statutory guidance issued by the former DfES are also applicable.

2.1.3 The Local Authority has an absolute duty to conduct an assessment for special guardianship support for children who are being looked after by the local authority or who were looked after immediately before the making of the Special Guardianship Order, where such a request has been made. It has discretion to conduct an assessment for children who are not looked after.

2.1.4 The regulations make a distinction between ongoing financial support that is paid on a regular basis which was agreed before the making of a Special Guardianship Order and other support needs (including financial) which may arise.

2.1.5 This assessment and provision of ongoing financial support prior to the making of a Special Guardianship Order will remain the responsibility of the local authority that agreed it for as long as the family in question qualifies for payments.

2.2 Child Arrangement Orders

2.2.1 Child Arrangement Orders (formerly Residence Orders) are made under Section 8 (1) of the Children Act 1989 and define the arrangements to be made as to the person with whom a child is to live.

2.2.2 Schedule 1, Para 15(1) of the Children Act 1989 enables the Local Authority to exercise its discretion to make contributions to the person caring for the child on a Child Arrangement Order towards the cost of the accommodation and maintenance of the child.
3 Criteria

3.1 Each application will be considered on its merits but priority will be given to children where the following circumstances apply:

1. The child is currently Looked After by the Local Authority, and
2. Where those applicants were formally assessed as foster carers by the Local Authority.
3. The making of a Child Arrangement Order or Special Guardianship Order in favour of the applicant is considered by the Local Authority as being in the child’s best interests, and
4. The applicant would not seek a Child Arrangement Order or Special Guardianship Order because of their financial situation unless a Child Arrangement Order Allowance or Special Guardianship Order Allowances were to be paid.
5. The child needs to be placed with a sibling or within a sibling group and the Child Arrangement Order or Special Guardianship Order application will include them.
6. Where a child is not looked after and the Local Authority assesses it as necessary to promote a Child Arrangement Order or Special Guardianship Order in the interest of the child, then it may support the application by contributing to the cost of the application and/or make regular payments.

3.2 Children Act Exclusion for Child Arrangement Order Allowances

3.2.1 In accordance with Schedule 1, paragraph 15 (2) of the Children Act 1989, the department cannot pay a Child Arrangement Order allowance to:

i. A parent of the child. Parent includes father without parental responsibility.
ii. The husband or wife of a parent of the child.
4  Financial Exclusion

4.1 Payments will not be made, when following detailed assessment by the Local Authority, which will include the financial situation of the applicants, the needs and resources of the child and any benefits or other allowances payable, it is determined that there is no need for financial support.

4.3 No additional allowances over and above the Child Arrangement Order / Special Guardianship Order allowance will be paid by the Local Authority to the Carers.

5  Assessment

5.1 If required, the Child’s Social Worker should assist applicants to complete the Financial Assessment Form (See Appendix 1). Once completed the Financial Assessment Form should be returned to the Finance Department so that the Financial Assessment (Means Test) can be completed. This should be done within 2 weeks of receipt of the financial assessment form.

5.2 It is important that families are helped to access benefits to which they are entitled. As part of the financial assessment process and preparation of the Special Guardian support plan, the child’s social worker should ensure that the family is enabled to apply for all benefits and tax credits to which they are entitled, this may include DLA for children who have emotional and behavioral difficulties as well as illness or disability. **Any financial support agreed by the Local Authority cannot duplicate any other payment available to the Guardian.**

5.3 To increase equality, a cap on eligible maximum mortgage contributions, personal pension scheme contributions and child care costs have now been introduced. The following cap / maximum rates will be applied to the means test:-

- Mortgage payments: Capped at 33% of net income;
- Personal Pension contributions: Capped at 10% of net income;
- Childcare costs: linked to equivalent national childcare tax credits. *For 15/16 this was set at £122.50 per week.*

5.4 If at the time of the initial financial assessment, applicants have applied, but are not yet in receipt of benefits, they will be financially re-assessed in a further 3 months. If evidence of Tax Awards is not received within 3 months, payments will be suspended and applicants will be informed of this in writing. If applicants are not eligible to receive benefits, they must still provide evidence to confirm this.

5.5 If applicants are eligible to receive Tax Awards, a further financial assessment will be completed after 3 months and the allowance will be adjusted accordingly. **If applicants have been overpaid, they will be required to reimburse the Local Authority.**
5.6 The Social Worker (and Team Manager) will take into account the following in formulating a recommendation as to the amount of Child Arrangement Order or Special Guardianship Order allowance:

1. The financial resources available to the applicants including all benefits available in relation to the child (e.g. Child Benefit, Child Tax Credit, Working Tax Credit, Disability Living Allowance).

2. The financial needs and resources of the child.

3. The amount required by the applicants in respect of their reasonable outgoings and commitments.

4. Expenditure for the purpose of facilitating the placement.

5.7 Means may be disregarded in relation to:-

1. The initial costs of accommodating a child who has been Looked After;

2. Recurring travel costs in contact arrangements.

5.8 The allowance will not include any element of remuneration to the carer for the act of caring for the child. In Special Guardianship cases the only exception to this is where the applicant is, or has been, a foster carer for the child but only where the decision to include it is taken before the Special Guardianship Order is made and the local authority consider it to be necessary in order to facilitate arrangements for that person to become a Special Guardian. That element of remuneration ceases to be payable after two years from the making of the Special Guardianship 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 (reg. 7(2)).

5.9 In all other cases, under Regulation 5 (2), the duty to provide support under S14F ceases to apply after three years from the date of the Special Guardianship Order, except in a case where the local authority is providing financial support and the decision to provide that support was made before the making of the order.

5.10 The amount recommended may be for a time limited period. For example, when a carer gives up work until a child starts secondary school, or a planned change in circumstances is anticipated at a future date.

The weekly amount recommended fall within the following age related bandings:

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Banding</th>
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<tbody>
<tr>
<td>0 – 4 years</td>
<td>5 – 10 years</td>
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They are linked to the Fostering Network’s Recommended Rates and will increase annually in line with those rates. This is to ensure a degree of equality with other financial support to permanence arrangements.
6 Decision Making

6.1 Once all the relevant information has been collected and the Financial Assessment (Means Test) has been completed, the information will be sent to the Head of Service, who will make all decisions in relation to the approval of Child Arrangement Order or Special Guardianship Order allowances.

6.2 If Child Arrangement Order / Special Guardianship Order allowance is agreed, the applicants will be informed in writing. The letter will include:

- The type of allowance awarded;
- The amount of allowance that has been agreed;
- The frequency of payments;
- The date of the first payment;
- Any conditions attached to the allowance;
- Any time limits attached to the allowance;
- The arrangements and procedure for review, variation and termination of the allowance;
- The requirement to notify the department of any change in circumstances in relation to where the child lives. This notification should be sent to the Head of Service.
- The requirement to complete and return the financial assessment form and provide supporting evidence is the responsibility of the claimant. Failure to do so may result in a suspension of the allowance and repayment of any allowances paid, For example, if the child has moved from the applicant’s home and Local Authority has not been notified.

6.2 The applicant will also be notified in writing of any decision not to agree a Child Arrangement Order or Special Guardianship Order allowance and the reasons why.

6.3 The allowance will normally continue until the child reaches his/her majority but must be reviewed on an annual basis.

7 Annual Review

7.1 The allowance is subject to an Annual Review undertaken by the Local Authority. The recipients of a Child Arrangement Order or Special Guardianship Order allowance will be required to notify the Local Authority of any significant changes to their financial circumstances.

7.2 The allowance will cease if the Child Arrangement Order or Special Guardianship Order is discharged or if financial hardship no longer exists.

7.3 When a Child Arrangement Order or Special Guardianship Order allowance is agreed, a first review date must be set twelve months from the date of agreement and reviewed annually or following any change of circumstances, including change in the child’s placement.
7.4 The applicants will be sent an Annual Financial Statement to complete (See Appendix 1) and return within 28 days. If the Annual Financial Statement is not returned within 28 days, payments will be suspended until the Annual Financial Statement is received.

7.5 On receipt of the Annual Financial Statement, the Finance Department will complete the Financial Re-assessment to determine whether circumstances indicate that an allowance should continue to be paid or if there has been any variation to the allowance. It may be decided that a home visit or contact by telephone is required in order to clarify any issues arising in the annual financial statement.

7.6 The applicants will be given written notice of the decision to change or stop payments and the reasons for this. Should the applicants wish to appeal this decision, they must notify their intention to the relevant Head of Service within 28 days receipt of the written notice.

7.7 If the applicants fail to submit the annual financial statement within 28 days of the due date, the allowance will be suspended until the annual financial statement is received.

7.8 The allowance may be reinstated at the discretion of the Head of Service or upon the outcome of an appeal that will be heard by the Assistant Director. There is no further right of appeal.

8  Ceasing Allowances

8.1 Child Arrangement Orders and Special Guardianship Orders end at 18 years, however the Special Guardianship allowance may be extended beyond 18 if the child is in full time education or training.

8.2 The allowance may be ended earlier than 18 in one or more of the following circumstances:

- The child stops living with the applicants;
- The child’s full time education ends and they start work or paid training;
- The child becomes entitled to income support or other benefit in their own right;
- The time limited period for which the allowance was agreed expires;
- The financial circumstances of the applicant change.

8.3 Applicants will be given advance notice that payments are to cease if the child is reaching 18 years of age. If the young person is in full-time education or training, the financial support will continue until such time that he/she leaves full-time education or gains employment. Guardians will be asked to provide a letter from the College or University to confirm that the young person is in full-time education or training.

8.4 Applicants will be given written notice of the decision to change or cease payments for all other reasons. The letter will include details of the applicants right to appeal. Applicants must notify their intention to appeal to the Head of Service, within 28 days receipt of the written notice. Payments will be suspended until the outcome of the Appeal. If following an appeal, the decision to change or cease payments is overturned, the Local Authority may decide to reimburse applicants from the date the payments were suspended.
9 Legal Costs

9.1 Existing Legal Proceedings

9.1.1 If the Local Authority identifies and supports the plan for Special Guardianship / Child Arrangement Order, this recommendation will be made in the Care Plan. In many cases the carer or proposed carer will either already be a party to the proceedings and be publicly funded or will not need to be made a party.

9.1.2 If the carer or proposed carer needs independent legal advice or need to be made a party to the proceedings, the Local Authority will provide financial support for court fees and reasonable legal costs at public funding rates in accordance with the Regulations and Guidance.

9.2 Children on Care Orders where the Local Authority is in agreement to the making of a Special Guardianship Order / Child Arrangement Order

9.2.1 The Local Authority could make an application to discharge the care order with a recommendation in the Statement for Special Guardianship. A report will be directed which must consider the whole range of options available for the child. If the carer makes an application to be considered for Special Guardianship, the Local Authority must complete a report in accordance with the welfare checklist, S(1) Children Act 1989 which again must consider all permanence options.

9.2.2 If the carer or proposed carer needs independent legal advice or need to be made a party to the proceedings, the Local Authority may consider providing financial support for court fees and reasonable legal costs at public funding rates in accordance with the Regulations and Guidance.

9.3 Application for a child not looked after

9.3.1 Applicants can apply for public funding. The Local Authority is not expected to meet legal costs. However, if the child is already known to the local authority and the making of a Special Guardianship Order / Child Arrangement Order is considered to be in the child’s best interests, the local authority may decide to provide financial support for court fees and reasonable legal costs at public funding rates.

9.4 Child Arrangement Order / Special Guardianship Order plan opposed by local authority.

9.4.1 If the Local Authority is opposed to the plan of a Child Arrangement Order / Special Guardianship Order, Legal costs will not be met.