

DERBYSHIRE COUNTY COUNCIL

CABINET

10 September 2013

REPORT OF THE STRATEGIC DIRECTOR FOR
CHILDREN AND YOUNGER ADULTS

Proposed Changes to the Allowances Payable to Residence and Special
Guardianship Orders Holders (Children and Young People)

1. Purpose of Report

To seek agreement to consult on proposed new policy and procedures in relation to the payment of allowances for Residence and Special Guardianship Order holders.

2. Information and Analysis

Residence and Special Guardianship Orders are 2 types of orders which can be made by the Court in respect of a child and confer parental responsibility on the carer or carers for the child. There are differences between the orders - as detailed below – and a key one is that a Special Guardian can exercise parental responsibility and by doing so override the exercise of parental responsibility by another.

Local Authorities have the power to pay related allowances where this is the most appropriate way to safeguard and promote the child's welfare, enabling a child to be legally cared for by another family under the protection of a Residence or Special Guardianship Order.

It is felt that the existing policy and procedures do not provide sufficiently clear information and current guidance could be improved. It is also felt that the existing policy does not adequately reflect the task, training, duties, responsibilities of different carers and thus does not promote the targeting of resources.

The present policy for Residence Allowances states:

In exercising this discretionary power, financial support may be granted when:

- The Local Authority has been instrumental in setting up the placement,
- And
- Assessment determines that the child would otherwise need to be in care.

New procedures for both Residence Orders and Special Guardianship Orders have been drafted in order to provide more detailed guidance to employees and the general public.

The new procedures will also make amendments to the allowance schemes attaching to these orders. It involves clearer criteria for eligibility for an assessment for an allowance and additionally an explanation as to why there is a differential in the calculation of allowance for those with Residence Orders, those with Special Guardianship Orders and those who are foster carers. There is also a different model for the calculation of allowances for ex foster carers and which are particularly important to support them to assume a new role for children in their care. The new procedures also allow a higher allowance to be paid in special circumstances subject to assessment and the approval of the Deputy Assistant Director.

The proposed new criteria for eligibility for an assessment for both orders is as follows:

Before Derbyshire County Council will consider undertaking an assessment for a Special Guardianship Order or Residence Order allowance, one of the following must generally be met:

- That immediately prior to the Special Guardianship/Residence Order being made, the child/children were looked after by the Local Authority for a period of at least three months and the Special Guardianship/Residence Order application is part of his/her care plan and has been confirmed with the Independent Reviewing Officer through the review process.
 - The child/children are subject to a Special Guardianship/Residence Order as part of a disposal of Care Proceedings or as a direct alternative to care proceedings, whether or not the child/children were looked after by the Local Authority for a period of at least three months.
 - Where following an assessment of the circumstances of the child and carer, the Deputy Assistant Director agrees that the case is exceptional.
- and
- The Local Authority supports the placement of the child with the person(s) taking the Special Guardianship/Residence Order.

The applicant must also live within the United Kingdom. As before, any assessment will not include a reward element, be means tested and take into account any financial benefits arising from the placement of the child.

The new calculation of the allowances can be found under **Financial Considerations** below.

Proposed consultation

The consultation will entail:

- The Deputy Strategic Director raising it within the local Family Justice Board.
- Sharing the draft procedures with CAFCASS.
- Sharing the draft procedures with local voluntary sector organisations, specifically Barnardos and Action for Children.
- Individual consultation with current Residence Order and Special Guardianship Order holders receiving allowances.
- Information being provided to Foster carers.

The individual consultation would entail letters being sent out to all current recipients of allowances. A draft letter is attached in Appendix One. The letters would advise of the new proposed rules, signpost them to the proposed procedures and advise that at the time of their next annual review, their allowances would be calculated under the new procedures. Within the notification, it will also be said that if the recipients are concerned that the new procedures will lead to hardship, or that their circumstances would be considered to be exceptional, they must contact the Department immediately. Their views will be sought regarding the new procedures.

Under these draft proposals, current recipients of Residence Order allowances will actually receive a marginally higher allowance provided they continue to meet the eligibility criteria, and recipients of Special Guardianship allowances will experience a minor reduction. The changes are necessary to ensure that all Derbyshire County Council policies in these areas are compatible and reflect the tasks undertaken by those caring for a child or young person in a variety of circumstances.

3. Financial Considerations

It is proposed that the ***Residence Order allowance***, when eligibility has been confirmed, will be set at 66% of the equivalent National Minimum Fostering Allowance for a child of that age.

Currently the Residence Order is set at 58% of Derbyshire's fostering allowance for a child of that age. Derbyshire County Council pay their foster carers a slightly higher amount than the National Minimum Fostering Allowance, so the increased payment will not be a significant one. Additionally it is anticipated that the new eligibility criteria will result in fewer allowances being paid. The percentage has been raised after close consultation with legal counsel and in response to recent legal challenges.

It is proposed that the ***Special Guardianship Order allowance***, when eligibility has been confirmed, will be set at the equivalent rate of the National Minimum Fostering allowance. As previously stated this is lower than the fostering rates paid by Derbyshire County Council (which include additional sums) and is lower than is currently paid (as the allowance at present matches Derbyshire's fostering allowance).

The exception to the above are former foster carers, who will not be means tested and who will continue to receive the equivalent of the full fostering allowance. Any enhanced fees that they receive in relation to the child's additional needs, will be paid for two years and then reviewed.

4. Legal Consideration

The legal requirements in relation to the payment of allowances are different for each order and this explains the different rates of allowances paid.

In the case of Residence Orders:

The Children Act 1989 sets out a number of duties and responsibilities for Local Authorities to promote the use of relative/friend carers when a child cannot live with a birth parent(s). Residence Order Allowances were introduced to support this and the purpose of them is to enable a child to be legally cared for by another family where otherwise financial constraints would prevent this. There is no right to an assessment for support for carers with Residence Orders but Local Authorities have the power to pay a residence order allowance where this is the most appropriate way to safeguard and promote the child's welfare. (*Children Act 1989, Schedule 2, Section 15.*) This means that Local Authorities have a discretionary power to make payments towards the cost of maintenance and accommodation of a child who is the subject of a Residence Order.

In the case of Special Guardianship Orders:

The Special Guardianship Regulations 2005 are more robust in setting out the Local Authority's responsibilities and includes a requirement to offer a financial assessment in cases where the child was Looked After immediately before the Order was granted or where the Local Authority has been substantially involved. In terms of the amount of any allowance paid, the Local Authority are instructed to 'have regard to the amount of fostering allowance that would

have been payable if the child was fostered'. (Regulation 13 paragraph 65 Special Guardianship Regulations 2005.)

Legal counsel has advised that an explanation needs to be given to explain the differential in allowances. Clearly, there are valid grounds on which to do so.

A Residence Order confers parental responsibility on the holder but this is shared and thus does not effectively place the ultimate decision making burden on any one individual. It is also a private law order which does not entail an obligation to work within the looked after children's system which is an onerous and specialised task requiring assessment and training. It is perhaps for these reasons that there is currently no legal obligation to meet the National Minimum Fostering Standards 2011 which mean carers under Residence Orders are not subject to on-going monitor and review. This is reflected in the level of the allowance being set at 66%/two thirds of the equivalent fostering allowance for children within that age band. It also reflects the added burdens and responsibilities which are assumed by those who choose to be special guardians for children and the role they play. This is reflected in the level of the allowance which is based on the Fostering Network's calculation that it costs 50% more to raise a child in foster care than in their own home and in formulating this policy due consideration has been given to the responsibilities, roles and duties underpinning the respective orders and arrangements.

A Special Guardianship Order allowance is set at a level which is consistent with a recent decision of the Court which requires a Local Authority to pay at a certain level. This happens to be higher than Residence Order allowances and no doubt reflects that the parental responsibility held by the special guardian can and invariably is exercised to the exclusion of any other parental responsibility holder. They are therefore responsible for all decisions relating to the child (with some minor statutory exclusion). The greater statutory weight of the Special Guardianship Order is also reflected in the more rigorous assessment process and in the level of the allowance being set at the equivalent rate of the National Minimum Fostering allowance.

Fostering allowances are paid to carers who have undergone the most rigorous assessment process and who meet the National Minimum Standards 2011 and remain subject to monitoring and review. Whilst they do not have parental responsibility for the children in their care, they are required to act in accordance with fostering procedures and as directed by the Local Authority.

Derbyshire are currently financially supporting 184 families with Residence Orders and 16 where foster carers have converted to Residence Orders.

Derbyshire are currently financially supporting 146 families with Special Guardianship Orders and 8 where foster carers have converted to Special Guardianship Orders.

The proposed timescales are as follows:

- Four week period for consultation
- Four week period to evaluate responses
- Present report to Cabinet
- Implement as agreed

5. Equality of Opportunity Considerations

Many of these children would otherwise be in care, hence the need for robust and transparent arrangements to support families and friends to care for them.

6. Equalities Impact Assessment

It is proposed that an Equalities Impact Assessment will be conducted taking into consideration any responses that are received during the consultation period. This will consider carefully any impact which the policy may have and particularly consider specific impact upon those groups identified in accordance with the Equalities Act.

7. Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder; and environmental, health, human resources, property and transport considerations.

8 Strategic Director's Recommendations

That the proposed consultation is undertaken and a subsequent report with final proposed procedures is submitted to Cabinet.

Appendices

Appendix One – draft consultation letter

Appendix Two – draft Residence Order Procedures

Appendix Three – draft Special Guardianship Procedures

Ian Thomas, Strategic Director of Children and Younger Adults

Dear ,

You are currently receiving a Residence Order /Special Guardianship Order allowance from Derbyshire County Council to support you in meeting your responsibilities towards a child or children living with you under one of those orders.

Derbyshire County Council has been reviewing our policy on these, in order to make the eligibility criteria clearer and to ensure that carers are financially supported fairly for the particular task they undertake.

The proposed procedures can be seen at
www.derbyshire.gov.uk/consultations

If these revised policies are adopted, detailed guidance will be given to employees all and to the general public.

At this stage, we seek through the website your views regarding the new procedures. This gives you as an individual the opportunity to have your say and for those who fear that they may be less well-off under the new scheme to say what your fears are so that we can take this onto consideration in terms of an exceptional hardship exemption.

It is proposed that at the time of your next annual review, your future allowances entitlement would be calculated under the new procedures and would then be paid with immediate effect. It will not be backdated in any way.

Under these draft proposals, current recipients of Residence Order allowances are very likely to receive a marginally higher allowance provided

they continue to meet the eligibility criteria. The recipients of Special Guardianship allowances may well experience a slight reduction but this will be minor only. The changes are however necessary to ensure that all Derbyshire County Council policies in these areas are compatible and reflect the tasks, training and duties and responsibilities undertaken by those caring for a child or young person in a variety of circumstances.

We will also be consulting with various organisations that have a direct interest in these changes. The findings from the consultation together with any amendments which might result to the draft policy and procedures will then be presented to the elected members for consideration.

Yours sincerely,

Ian Thomas
Strategic Director

Derbyshire County Council

2.1.6 Residence Orders

and Derbyshire Support Scheme

SCOPE OF THIS CHAPTER

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1. Legislative Background and Introduction

The Children Act 1989 introduced Residence Orders. They can be granted in private law custody disputes to determine where a child should live but also in any 'family proceedings' concerning the welfare of the child. This applies even where no application has been made and includes adoption proceedings.

In all situations where Derbyshire County Council is involved in care proceedings, consideration will be given as to whether the child could more appropriately be placed with a relative or friend as an alternative to being placed with foster carers. If permanency is agreed as the Care Plan, consideration might also be given to placing the child with a relative or friend under a Residence Order or Special Guardianship Order as an alternative to placing the child in care or for adoption. Where criteria are met, carers will be offered the opportunity of being assessed in relation to eligibility for an allowance, see Section 9.

Residence Orders are also a way to provide someone who is not a legal parent of a child with parental responsibility but such cases are rare.

A Residence Order comes to an end when a child reaches 18 unless the Court specifies that it should end earlier or another Order is made that discharges it.

There are no statutory leaving care services available to young people who were subject to a Residence Order unless they become Looked After beyond 16 years of age. However, Section 17 continues to apply to all children in need.

2. Who May Apply

Applications for Residence Orders may be individual or joint. Joint applicants do not need to be married. Applicants must be 18 or over.

The following people may apply:

- a. A parent or guardian;
- b. A step-parent who has treated the child as 'a child of the family';
- c. Any other person who has obtained the consent of all those with parental responsibility;
- d. Any person who, if the child is in care, has the consent of the Local Authority;

- e. Any person who has obtained the permission of those who already have a Residence Order for the child;
- f. Anyone who the child has lived with for at least three years;
- g. A Local Authority foster parent if the child has lived with them for at least one year immediately preceding the application to Court.

The following people may apply with the leave of the Court:

- a. The child him/herself if the Court is satisfied that he/she has sufficient understanding to make the application;
- b. Any person with a genuine interest in the child's welfare.

3. Parental Responsibility

The holder of a Residence Order has or shares **Parental Responsibility** for the child and will have clear responsibility for the day-to-day decisions about caring for the child.

The child's parents continue to hold Parental Responsibility if a Residence Order is made to only one of them or to another and their exercise of parental responsibility is unfettered unless it has been restricted by the Court in some way. The parents retain the right to consent or not to the child's adoption or placement for adoption.

In addition there are certain steps in a child's life which require the consent of every-one with Parental Responsibility or with leave of Court, for example:

- To change of the child's family name;
- The removal of the child from the United Kingdom for longer than a month;

4. Approval of a Residence Order for a Looked After Child

Where a child is a 'Looked After Child', the decision to support the making of a Residence Order should be part of the care planning for the child. If the child is subject of on-going legal proceedings, the child's Social Worker will need to reflect the review decisions in the child's Care Plan and in the recommendation to the Court.

If the child is looked after under Section 20 of the Children Act 1989, and a plan for a Residence Order application was agreed at the Looked After Children Review, the child's Social Worker will need to support the applicant in making the application for a Residence Order. The Local Authority cannot apply for a Residence Order.

Where there are child protection concerns and the child is not yet a 'Looked After Child', Derbyshire County Council must consider whether the application for a Residence Order by a relative or friend might avoid the child being a 'Looked After Child' and the process above will need to be followed.

The person seeking the Residence Order will need to make the application to court, but if Derbyshire County Council supports the plan, the child's Social Worker will provide information and guidance.

If a Residence Order allowance is thought to be appropriate (and it is agreed by the District Manager that an assessment can be recommended) a report should be presented to the Deputy Assistant Director for a decision.

If the application is being made in support of a child who is already a 'Looked After Child' and Derbyshire County Council supports the application, financial assistance may be granted to pay for the application. In these cases the child's Social Worker must seek permission from the District Manager and the Deputy Assistant Director.

5. Process and Assessment

Processes for assessing and approving applicants who seek Residence Orders in respect of children who are 'Looked After Children' or who are at risk of becoming Looked After need to be sufficiently rigorous as the proposed arrangement requires.

In reaching the decision to approve and support a person applying for a Residence Order, the Authority will have due regard to research findings relating to the placement of children with relatives, the proven benefits and desirability of continuity for children and the other potential gains that may accrue from placement within the extended family, with a known carer or within the child's wider community network.

When an application for a Residence Order is requested or considered for a 'Looked After Child', the child's Social Worker will:-

- Provide full information in writing to the prospective applicants which will explain the effects a Residence Order will have with regard to the applicant's relationship with the child, the birth parents and the Local Authority.
- Consider any special needs of the applicant that require information to be shared in another format (e.g. large print, different language, use of an interpreter).

- Obtain the views of people who hold parental responsibility for the child including birth fathers who do not hold parental responsibility, of the intention of the foster carers or other persons, to apply for a Residence Order.
- Ascertain the child's wishes and feelings regarding the proposed application and consider the child's need for support and/or counselling.
- Undertake an assessment of the proposed applicants to determine whether the placement will meet the child's needs.
- Advise the prospective applicants that they can seek independent legal advice.
- Arrange for an assessment of financial/on-going support, by the Financial Review Team if agreed by the Deputy Assistant Director (financial support does not apply if the child is to live with a parent or step-parent).
- Ensure information is given in a way that takes into account any special needs of those people being interviewed, e.g. use of interpreter, large print.

The allocated Social Worker should record the information on the child's electronic record. Court timescales will need to be clarified. An Assessment should be commenced.

In all cases, there will need to be an assessment of the needs of the child, the suitability of the applicant(s), the proposed contact arrangements and the support needs of the child, parents and the applicant.

The assessment of the applicants should include their medical history, the references received and the Disclosure and Barring Service check (DBS) of all adults in the house over the age of 18 years.

Any action/counselling must be recorded on the child's electronic record. Ideally counselling should take place prior to any application being lodged with the Court and the applicant should be advised to seek legal advice where appropriate. The purpose of counselling is to ensure that the applicant, the child and the child's birth parents fully understand the nature and implications of a Residence Order and that their wishes and feelings are considered.

The applicants should be advised of the personal information which will be required for the Court report.

The applicants should be seen at home both jointly and separately. The child should also be seen in the company of the applicants to enable an assessment of the interaction and relationships. Any other members of the household should be interviewed and appropriate counselling provided.

The child needs to know and have an understanding of his/her birth origins as well as to be aware of the implications of a Residence Order. He/she should be seen alone if the child is old enough (e.g. over 5 years) and is willing to be seen alone. It is important to note that even young children can understand the difference between a 'parenting' parent and a 'birth' parent. It is essential that the child's views are recorded and taken into account. Where a child has strong bonds with the birth parents it is crucial that this matter is given careful consideration and contact issues addressed.

Counselling the birth parent or anyone who has parental responsibility for the child is essential. The Social Worker for the child is responsible for undertaking this. In addition the birth parent should be advised of the availability of independent support arrangements and how to access these. Any birth parent not agreeing to the application should be advised to engage a solicitor as soon as possible.

6. Contact

Issues of any on-going contact should be discussed fully with all parties. Such arrangements may be made informally if all parties are in agreement. However there may be child protection concerns and consideration may need to be given to on-going supervisory arrangements, how able the applicants are to supervise contact and ensure the child's safety. A recommendation regarding contact may be made to the Court. However, contact is ultimately a matter for those with parental responsibility and this should be kept in mind when considering the merits of a child's future being secured through the mechanism of a Residence Order.

7. Report to Court

If the child is a 'Looked After Child', or known to the Local Authority, the Court will usually order a report from the Local Authority.

The Social Worker or Social Workers preparing the Court report should be suitably qualified and experienced. If the applicant is an existing foster carer, the supervising Social Worker will complete the sections on the carers and the child's Social Worker will complete the sections on the child and birth family.

Once completed, the Court report should be submitted by the author(s) to the Service Manager and to [Legal Services](#), if this is considered appropriate.

In cases where the child is already subject to Court proceedings, the Social Worker will need to reflect the plan for a Residence Order in the Care Plan and in the recommendation of the final Court report.

If the child is not already subject to on-going care proceedings and an application for a Residence Order is made, the Court may request a Section 7 or a Section 37 report from the Local Authority and will usually do so if the child is already known to Derbyshire County Council. The author of the report must attend the Court with the applicants.

8. Process following the making of the Order

Upon the making of an Order the child's Social Worker will record the Residence Order as a new Legal Status in the Legal Section on the electronic file.

When a child is placed with a carer on a Residence Order and the carer is entitled to financial help, the child will have a Plan in place.

If there is an on-going plan already in place, the financial need would be added to the current plan on the electronic record and the service provided to meet this need would be "Residence Order - Financial Support".

If the case is to remain open just to deliver financial support, the Key Team will cease their involvement by transferring the case to the CAYA Placements Finance Team with the role added of U6 Financial Review only. A task will need to be sent to the Financial Review Team notifying them of the transfer. The case will then be held by the Financial Review Team as an open referral with Key Worker role U6. The District will remain responsible for supporting the CAYA Placements Finance Team with information for the annual reviews; see 10.6.Payment and Review Process.

On receipt of the task, the Finance Team will check that the Residence Order is recorded and will then add a review identifying a due date for the first review.

9. Discharge or Variation of Residence Order

A Residence Order can be varied or discharged on the application of:

- Holder of the Residence Order;
- The Local Authority in whose name a **Care Order** was in force before the Residence Order was made;
- Anyone with a Residence Order in respect of the child before the current Residence Order was made; or
- With the leave of the Court:
 - The child's parents or guardians;

- Any step parent who has **parental responsibility**;
- Anyone who had parental responsibility immediately before the current Residence Order was made;
- The child (if the court is satisfied that the child has sufficient understanding).

Where the applicant is not the child and the leave of the Court is required, the Court may only grant leave if there has been a significant change in circumstances since the Residence Order was made.

The Court may during any family proceedings in which a question arises about the welfare of a child who is subject to a Residence Order, vary or discharge the Order in the absence of an application.

10. Residence Order Allowances

10.1 Vision and Purpose of the Scheme

Derbyshire County Council aims to promote the welfare and improve the outcomes for children and young people who, because they are unable to live with their parents, are being brought up by members of their extended families, friends or other people who are connected with them.

Derbyshire County Council is committed to supporting family/friend carers in a variety of ways.

The majority of children and young people can and will have their needs met using universal and targeted services, but the Residence Order Allowance Scheme recognises that some children and their prospective permanent carers may have additional needs arising from their individual circumstances. Those needs or some of those needs may give rise to eligibility for assistance.

Therefore the scheme exists to provide in proper cases essential financial support to underpin Care Plans and arrangements for children and young people to live with family, friends and other carers where the Local Authority has usually been involved.

10.2 Legal Context for Payments and Support

The Children Act 1989 sets out a number of duties and responsibilities which are placed on Local Authorities and have as an aim the placement of children with family or friends if a

child cannot live with a birth parent(s). Residence Order Allowances were introduced as a possible means to support this.

Local Authorities are required under Section 17, Children Act 1989 to:-

- safeguard and promote the welfare of children within their area who are in need; and
- so far as is consistent with that duty, to promote the upbringing of such children by their families, by promoting a range and level of services appropriate to these children's needs.

The option of providing support without a Legal Order should also be considered where all parties are in agreement that no Order is necessary to underpin the care arrangements applying the so called 'no order principle'. Where a Legal Order is required, Residence Orders should be considered as a means of preventing children and young people from becoming and/or remaining looked after, and to provide them with a stable home.

In promoting stable family placements for children, consideration will be given to the payment of a Residence Order Allowance and reasonable support with legal and court costs.

In special circumstances a request for financial support at a higher rate than the usual Residence Order Allowance may be considered by the Deputy Assistant Director. This will require a report setting out the individual circumstances, the child's assessed needs, the funding request and how that would enhance the welfare of the particular child.

There is no absolute right to an assessment for support for carers with Residence Orders. However, Local Authorities have the power to pay a Residence Order Allowance in a proper case where this is the most appropriate way to safeguard and promote the child's welfare. (*Children Act 1989, Schedule 2, Section 15*). This means that Local Authorities have a discretionary power to make payments towards the cost of maintenance and accommodation of a child who is the subject of a Residence Order.

Derbyshire's Residence Order Allowance is set at 66% of the Fostering Network recommended minimum fostering allowance. This is not an arbitrary figure. It is based on the Fostering Network's calculation that it costs 50% more to raise a child in foster care than in their own home and in formulating this policy due consideration has been given to the responsibilities, roles and duties underpinning the respective orders and arrangements. For example, a Residence Order confers parental responsibility on the holder but this is shared

and thus does not effectively place the ultimate decision making burden on any one individual. It is also a private law order which does not entail an obligation to work within the looked after children's system which is an onerous and specialised task requiring assessment and training. It is perhaps for these reasons that there is currently no legal obligation to meet the National Minimum Fostering Standards 2011 which mean carers under Residence Orders are not subject to on-going monitor and review. This is reflected in the level of the allowance being set at 66% two thirds of the equivalent fostering allowance for children within that age band. It also reflects the added burdens and responsibilities which are assumed by those who choose to be special guardians for children and the role they play.

10.3 Eligibility for Assessment for an Allowance

The child's Social Worker must advise potential Residence Order applicants in writing of the availability of financial support and inform them of the provision and criteria for Residence Order allowances.

Applicants should be informed that in special circumstances, if it can be demonstrated that extra costs are incurred to meet the additional needs of a child, the allowance may be payable at a higher rate. Initially, this would be time limited to six months but prior to the end of the six month period, the applicant will be contacted and advised that the higher rate will reduce to the standard rate at the end of the six month period unless they make contact and are able to demonstrate that the special circumstances remain the same.

All applicants must be informed that the Residence Order Allowance paid will be subject to an annual review.

Derbyshire County Council does not pay a Residence Order allowance when the order places the child in the care of a person who is his/her parent or step-parent. Assistance might however be available under Section 17 of the 1989 Children Act if the child is assessed as a 'child in need'.

Derbyshire County Council will ordinarily only assess in relation to the payment of a Residence Order allowance in respect of children:

- Who immediately prior to the Residence Order being made, were looked after by the Local Authority for a period of at least three months and the Residence Order

application is part of his/her Care Plan and has been confirmed with the Independent Reviewing Officer through the reviewing process;

- Who are subject to a Residence Order as part of a disposal of Care Proceedings or as a direct alternative to care proceedings, whether or not the child/children were looked after by the Local Authority for a period of at least three months

and

- The Local Authority supports the placement of the child with the person(s) taking the Residence Order;

or

- Following an assessment of the circumstances of the child and carer, the Deputy Assistant Director agrees that the case is exceptional. Examples of this could include:
 - a child who was looked after for less than three months due to the intervention of the applicant
 - a carer who has been receiving an allowance from another Local Authority moves in to the County and the allowance under the other Local Authority's scheme ceases
 - there is already a Residence Order in force and the order was an alternative to involving the Local Authority in the likely initiation of care proceedings.
- The applicant must live within the United Kingdom.

Please also note that if the Local Authority opposed the Residence Order application but the applicant is successful in their application, the Local Authority will assess the applicant for eligibility of the allowance as if they had been in support of the placement.

Anyone currently receiving a Residence Order Allowance from Derbyshire County Council who would not fit the above criteria, will not lose their allowance with the introduction of this revised policy. It will continue to be reviewed annually to determine eligibility for an allowance.

The general principle should be that where a person/s is seeking to make a major commitment towards a child by means of a Residence Order, this commitment by the individual should be taken to include a willingness to meet costs associated with such a commitment. To this there will however be exceptions.

10.4 Calculation of Allowances Payable

The Residence Order allowance will:

- Not include any reward element;
- Be means tested and take into account the financial resources of the Residence Order holder including any financial benefit arising from the placement of the child e.g. child benefit, tax credit or any benefit which has been or can be claimed for that child. Derbyshire County Council uses the Department for Education and Skills recommended standardised means test model;
- Take into account the financial needs/resources of the child (if any) excluding mobility/attendance allowance/benefits related to disability;
- For the reasons referred to above, be ordinarily set at 66% of the equivalent age related fostering allowance rate at the point of the Order being made and increase annually in line with the fostering allowance rate.

In exceptional circumstances a request for a higher payment may be considered by the Deputy Assistant Director on production of a report setting out the individual circumstances, the child's assessed needs and the funding request

It is not the function of the Derbyshire County Council to accept responsibility for income maintenance. Help in determining eligibility to benefits can be provided by;

Derbyshire's Welfare Rights Service who can be contacted on 0845 1202985 Monday to Friday 11.00am - 4.30pm.

The payment of a Residence Order Allowance may affect receipt of benefits and advice should be sought of the appropriate Benefit Agency

10.5 Discretionary Payments

The Local Authority will consider a settling in payment and/or 'one off' payments under Section 17, for carers with a Residence Order who are experiencing financial problems. These discretionary payments can be considered whether the applicant would or would not be eligible for Residence Order Allowances. Eligibility for these Section 17 payments will be decided by the relevant District Manager.

10.6 Payment and Review Process

The Deputy Assistant Director will inform the child's Social Worker of the decision to make the payment and following a financial assessment, how much that allowance will be.

Payment commences as from the date of the Residence Order or from the point at which it is approved.

The CAYA Placements Finance Team will write to the holder or applicant of the Residence Order setting out the amount of financial support agreed by the Deputy Assistant Director and information in relation to the following:

- How the decision was made.
- Whether financial support is to be paid in regular instalments and if so, the frequency of payment.
- The amount of financial support.
- The period for which the financial support is to be paid.
- When payment will commence.
- Conditions for continuing payment and date by which conditions are to be met, i.e. annual review.
- Arrangements and procedure for review, variation and termination of the allowance.
- It is the carer's responsibility to notify the Local Authority of any changes in their circumstances or those of the child.

The case will remain open to the Local Authority to deliver financial support. The Plan would be a Child in Need Plan with the only need identified being the Financial Need and the service provided to meet this need would be "Residence Order - financial support". The Plan is recorded by the Social Worker before their involvement is completed. The District is responsible for supporting the CAYA Placements Finance Team with annual reviews where necessary. For the first annual review this will usually be the previous Social Worker. For any future reviews, the District Duty Service will assist. The reviews may be a paper exercise where there is no change or a minor change in circumstances. However, if there is a substantial change of circumstances, e.g. a serious change in the behaviour of the child, it would normally be necessary to conduct a new assessment of needs.

The allowance is reviewed annually and this is to;

- Establish that the young person continues to meet the requirements for an allowance.
- Complete a financial review.
- Determine that the allowance is still appropriate and consistent with legislation and departmental policy.

When a review is due, a Financial Assessment Review form will be generated by the CAYA Placements Finance Team (regulated services) for completion by the carer. The team will

review cases on an annual basis and will record any changes and outcomes onto the electronic record as a financial review. The carers will be required to complete an allowance review questionnaire. This will include entitlements to child benefit and tax credits.

In order for allowances to continue up to 18 years of age, Derbyshire County Council will need to confirm that the young person:

- Continues to reside full time in the care of the Residence Order holder - up to 18 years.
- Is not in receipt of any benefits other than specific grants to support training/education in their own right. For young people in employment, the Residence Order allowance will cease once the young person is earning the equivalent of the household element of the weekly fostering allowance. An appeal can be considered if the young person's circumstances are exceptional.
- And in addition that the financial circumstances of the carers in receipt of the allowance remain unchanged.

If an overpayment has been made for example because it is found that the child is no longer resident, or for any other reason, the Local Authority will recover the overpayment.

The Residence Order Allowance will change as the child moves into the next age band as set out in fostering allowances

Payment of the Residence Order Allowance will automatically end when:

- The child ceases to live with the Residence Order holder before 18; or
- Reaches 18 years of age.

10.7 Notifications

The Residence Order Allowance is only payable in respect of the child who is subject to a Residence Order and who is resident with the person named in the Order.

Those in receipt of Residence Order Allowances are to agree that they will inform Derbyshire County Council immediately of any significant changes in the family: for the carers themselves, their children and the child/children subject to the Residence Order.

Where information has been given orally, the carers must confirm the information in writing within seven days

Derbyshire must be informed of the following:

- The child or young person ceases to have a home with the person who holds the Residence Order.
- The child or young person ceases full time education or training and commences employment.
- The child or young person qualifies for welfare benefits in his/her own right.
- Change of address.
- The child or young person dies.
- There is a change in financial circumstances or the financial needs or resources of the child and/or the carer which may affect the amount of financial support payable to the carer.

The Area Office must notify the CAYA Placements Finance Team if they are informed of a change of address for the family to ensure that payment is sent to the correct address. They must also notify the CAYA Placements Finance Team if they are made aware that the arrangement has ended and the child is no longer living with the Residence Order holder, so that payments can be stopped.

The CAYA Placements Finance Team must make a referral to Call Derbyshire if they receive information from the Residence Order holder that raises concern about the child's welfare or if they fail to return the annual financial review form after the second reminder has been sent. Many of the children subject to a RO are unable to live with their parents due to child protection concerns, it is therefore important that Call Derbyshire make the relevant Area aware if the child is no longer living with the Residence Order holder.

10.8 When a Residence Order Allowance is not granted

The applicant will be informed of this in writing and the reasons for the refusal clearly set out. Reasonable time will be given to allow the applicant to make representation to the Deputy Assistant Director.

The Local Authority remains required to:

- safeguard and promote the welfare of children within their area who are in need;
- and
- so far as is consistent with that duty, to promote the upbringing of such children by their families, by promoting a range and level of services appropriate to these children's needs. *Children Act 1989 S.17.*

The Local Authority may consider a settling in payment or discretionary payment. Eligibility for these Section 17 payments will be decided by the relevant District Manager.

11. Foster Carers Applying for a Residence Order

Where foster carers are applying for a Residence Order in respect of a child they have been fostering, and Derbyshire County Council supports this plan, the carers will ordinarily receive a Residence Order Allowance until the child is 18. This is to support a Plan for the child and is considered under 'special circumstances'. The allowance will be minus any welfare benefits, including child benefit and tax credits that become payable to the foster carer on obtaining a Residence Order.

Fostering payments will cease from the date of the Order.

In the case of foster carers only, this payment is set at the same rate as the fostering allowance for a child in that age band. This will not be subject to a means test but a financial assessment will be applied which takes account of benefits etc. This should be reviewed annually.

Christmas, birthday and holiday allowances will cease at the point that the Order is made, however where this has been paid prior to these procedures, they will continue to be paid up until the next annual review.

Any enhancements that had been paid through Derbyshire's Children First Scheme (Disability) in relation to a child's additional or specific needs will be paid for a transitional period of two years and will then be reviewed to determine whether the additional support is still required.

At the end of the two year period and following review by the child's District Social Care Office, a decision will be made to continue enhanced payments, reduce them or cease payments. Payment of any on-going additional allowance beyond two years would need to be justifiable and reviewed annually to ensure that it remains appropriate. Professional advice may be sought to ascertain whether or not the exceptional circumstances continue to exist and whether the specific needs require additional financial support. The reviews may be a paper exercise where there is no change or a minor change in circumstances. However, if there is a substantial change of circumstances, e.g. a serious change in the behaviour of the child, it would normally be necessary to conduct a new assessment of needs.

The additional allowance would not be guaranteed, although the basic fostering allowance would be.

In the case of the Foster Plus Scheme, payments will reduce over the two year period in order to assist the former foster carers to make the financial adjustment from fostering to the new legal status.

If the applicant is a foster carer from an independent fostering agency placement, the above would apply.

In special circumstances a request for a higher payment may be considered by the Deputy Assistant Director on production of a report setting out the individual circumstances, the child's assessed needs, the funding request and how it would enhance the welfare of the particular child.

and if:

- Such an enhancement was previously paid as part of the fostering allowances.
- The child's specific care needs require additional financial support.

12. Children not known to Derbyshire County Council

If a child is normally resident in another Local Authority and has been placed with a family in Derbyshire for whatever reason, it is expected that the placing Authority should have made the decisions about financially supporting the placement prior to it being made and be responsible for any financial support agreed

If Derbyshire as the resident Authority is requested to financially support the placement of a child that moves into their area, this will be subject to the same full assessment as any other new referral.

13. Child Protection Concerns

If any Child Protection concerns arise within the course of assessment or the provision of support services, the worker should immediately consult with their line manager and refer the matter following Child Protection procedures.

End

Special Guardianship Orders

and Support Scheme

SCOPE OF THIS CHAPTER

This chapter should be read in conjunction with *Permanence Planning Guidance* and *Court Reports in Adoption/Special Guardianship*.

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1. **Legislative Context**

- **Adoption and Children Act 2002 and Amendment to Children's Act 1989**
- **The Special Guardianship Regulations, England 2005**
- **Family Procedure Rules 2010**
- **The Children Leaving Care Act 2000**

2. **Introduction and Background**

Special Guardianship provides an 'alternative legal status for children that offers greater security than long term fostering but without the absolute legal severance from the birth family that stems from an adoption order'. (Special Guardianship Guidance DFES 2005).

It addresses the needs of a significant group of children, who need a sense of stability and security but who do not wish to make the absolute legal break with their birth family that is associated with adoption.

It will also provide an alternative for achieving permanence in families where adoption, for cultural or religious reasons, is not an option.

A Special Guardianship Order can offer greater stability and legal security to a placement than a **Residence Order**.

Special Guardians share **parental responsibility** for the child with the parents but are entitled to exercise such responsibility to the exclusion of any other person with parental

responsibility and also has the primary responsibility for day to day decision-making in relation to the child.

3. Who May Apply?

Applications for Special Guardianship may be individual or joint. Joint applicants do not need to be married. Special Guardians must be 18 or over and cannot be the parent of child in question.

Subject to the above proviso's the following persons may apply:

- Any guardian of the child.
- Where the child is subject of a Care Order, any person who has the consent of the Local Authority.
- A Local Authority foster carer who is a relative of the child or with whom the child has lived for one year immediately preceding the application (even if the Local Authority does not consent).
- Anyone who holds a Residence Order with respect to the child or who has the consent of all those in whose favour a Residence Order is in force.
- Anyone with whom the child has lived for three years.
- Anyone who has the consent of all those with parental responsibility for the child.
- Anyone, including the child, who has the leave of the Court to apply.

4. Counselling

Any action/counselling undertaken must be recorded on the child's file.

Ideally, counselling should commence prior to any application being lodged with the Court and the applicant should be advised to seek legal advice where appropriate. The purpose of the counselling is to ensure that the nature and implications of Special Guardianship are fully understood by the child, the Special Guardian and the birth parents and that their wishes and feeling are considered and recorded.

The prospective Special Guardians should be made aware of the need to obtain the personal details of their family for inclusion in the Schedule 21 report for Court. The prospective Special Guardians should be seen at home, jointly and separately. The child should be seen in the company of the applicants so that a view can be obtained regarding

the family relationships. Any other residents of the home should be interviewed and appropriate counselling provided.

The child needs to have an understanding of their birth origins as well as to be aware of the implications of special guardianship. He/she should be seen alone if the child is old enough and views must be recorded. Where a child has strong bonds with their birth parents it is crucial that this matter is given careful consideration and contact issues addressed.

The birth parents or anyone with parental responsibility also needs to be provided with counselling and advised regarding any available support arrangements. Any birth parent not agreeing to the application should be advised to engage a solicitor.

5. Parental Responsibility

Special Guardians share **parental responsibility** for the child with the parents but is entitled to exercise such responsibility to the exclusion of any other person with parental responsibility and also has the primary responsibility for day to day decision-making in relation to the child.

The child's parents will continue to hold parental responsibility but their exercise of it is limited by virtue of the Special Guardian's right to exercise parental responsibility to the exclusion of any other holder of parental responsibility.

However, there are certain steps in a child's life which require the consent of everyone with parental responsibility, for example:

- Change the child's family name.
- The removal of the child from the United Kingdom for longer than three months.

A Special Guardianship Order made in relation to a **Looked After Child** will replace the **Care Order** and the Local Authority will no longer share parental responsibility.

A Care Order, however, will not automatically revoke a Special Guardianship Order although the Special Guardian's exercise of parental responsibility will be restricted as the Local Authority will have ultimate responsibility for decision-making under the Care Order.

6. The Circumstances in which a Special Guardianship Order may be made

The Court may make a Special Guardianship Order in any family proceedings concerning the welfare of the child. This applies even where no application has been made and includes adoption proceedings.

Any person making an application for a Special Guardianship Order must give three months' written notice to their Local Authority of their intention to apply. In relation to a Looked After Child, the notice will go to the Local Authority looking after the child. In all other cases, the notice will be sent to the Local Authority for the area where the applicant resides. The Local Authority receiving the notice will then have a duty to provide a report to the Court.

The only exception to the requirement for three months' notice is where the Court has granted leave to make an application and waives the notice period.

Where the Local Authority has received notice from an applicant or a request for a report from the Court, it should send written information about the steps it proposes to take in preparing the report to the prospective Special Guardian and the parents of the child in question. This should include information about Special Guardianship support services and how in the future to request an assessment of needs for support.

7. Planning Meeting

Once notice has been received that an application for Special Guardianship is to be made or where a Court waives the need to give such notice, the notice or order should be passed to the allocated Social Worker or, if the child is not previously known, arrangements must be made for the case to be allocated to a Social Worker in the Adoption Service.

The allocated Social Worker should arrange a planning meeting as soon as practicable after the notice is received. The planning meeting should clarify the steps to be taken, who will carry out the necessary assessments and who will contribute to the report for the Court. Court timescales will need to be clarified.

The Social Worker or Social Workers preparing the Court report should be suitably qualified and experienced. There are no specific requirements as to the level of qualification or experience required and it will be for the manager of the relevant Social Work Team to ensure that the allocated worker is competent to write the report.

In all cases, there will need to be an assessment of the needs of the child, the suitability of the applicant(s), the proposed contact arrangements and the support needs (see [Section 13.5, Assessment for Support](#)) of the child, parents and the prospective special guardian.

The assessment of the applicants should include their medical history, the references received and the Disclosure and Barring Service checks (DBS) and other statutory checks undertaken for the assessment.

8. Approval of Special Guardianship for Looked After Children

A formal referral for a Special Guardianship Order for a Looked After Child by the Local Authority can only be made following a statutory review at which Special Guardianship is recommended or at the request of the Court during proceedings. There is no need for an additional planning meeting in these circumstances. However, the case can be presented to the Professional Advisor Meeting and/or Adoption Agency Decision Maker for advice if necessary.

Adoption Agency Regulations 2005 state that a plan for permanence must always be considered at the second review (four months following admission to Care). The review must consider any action necessary to provide permanence for the child and address the question of on-going contact with people who have parental responsibility for the child and significant others.

The prospective Special Guardian should write to the Deputy Assistant Director to notify them of their intent to apply for an Special Guardianship Order. They must give written permission for statutory checks to be undertaken and sign and date the letter.

Special Guardianship as an outcome for a Looked After Child must also be approved by the District Manager who is responsible for that child.

9. Referral from Local Authority foster carer - applying without the support of Local Authority

This type of non-agency application should be a rare occurrence, as efforts should be made to encourage foster carers to work in partnership with the Department in order to meet the needs of the child. In circumstances such as this, an independent worker will be appointed to complete the assessment.

Financial support in such circumstances will be subject to means testing.

In this situation, foster carers who have had the care of a child for a year can apply for a Special Guardianship Order, once they have given three months of their intention to do so.

10. Report for the Court – Schedule 21

After three months has elapsed from the notice of intention to apply for a Special Guardianship Order, the application can be made. Where an application is lodged during proceedings, the time limit for the completion of the report will be set by Court. The time limit for completion of the reports in all other cases will be set at the first hearing of the application.

The Social Worker or Social Workers preparing the Court report should be suitably qualified and experienced.

The information required for a Local Authority report is the same for all Special Guardianship Order applications (whether the application is made as a result of a recommendation at a Looked After Children Review or whether the court has asked the Local Authority to prepare a report during proceedings). Where comprehensive assessments have already been completed during proceedings, legal advice may be sought as to what use can be made of them as a substitute for the Schedule 21 report.

Schedule 21 is lengthy and the details required are prescriptive. The report must be completed in conjunction with a Supervising Social Worker. The child's Social Worker will complete the sections on the child and birth family and the Supervising Social Worker on the carer.

Written information should be sent to the prospective Guardian and to the parents of the child outlining the steps the Local Authority proposes to take in preparing a report. It should include information about support services and an assessment of support needs.

Once completed, the Court Report should be submitted by the author(s) to their line manager(s) for approval. Four copies are required for Court.

If a report is requested by the Court during care proceedings, the manager for the child should contact the Adoption Manager and provide them with the details.

See [*Court Reports in Adoption/Special Guardianship*](#) for what is required to be included in the report.

11. Discharge or Variation of a Special Guardianship Order

A Special Guardianship Order can be varied or discharged on the application of:

- The Special Guardian (or any of them if there is more than one).
- Any parent or Guardian of the child concerned.

- The child.
- The Local Authority designated in a Care Order.
- Anyone in whose favour a Residence Order is in force with respect of the child.
- Anyone who immediately before the making of a Special Guardianship Order had parental responsibility for the child.

The following require leave of the Court:

- The Child.
- The child's parents or guardians.
- Any step parent who has acquired but not lost parental responsibility.
- Anyone who had parental responsibility immediately before the Special Guardianship Order was made but now no longer does so.

Where the applicant for leave is a child, the Court may only grant the child leave to apply if it is satisfied the child is of sufficient age and understanding. Where the applicant for leave is not a child, the Court may only grant leave if there has been a significant change in circumstances since the Special Guardianship Order was made.

The Court may in any family proceedings in which a question arises about the welfare of a child who is subject to a Special Guardianship Order, vary or discharge the Order and even in the absence of an application.

12. Entitlement to Leaving Care Services

Section 24(2) of the Children Act 1989 defines the persons qualifying for advice and assistance and includes a person who has reached the age of 16 but is not yet 21 and with respect of whom there is in force a Special Guardianship Order (or there was at the point the child turned 18) and who was looked after immediately before the making of a Special Guardianship Order. If those criteria are met, the child is a “Qualifying Child” within the meaning of the Act.

A ‘Qualifying Child’ does not however have access as of right to the same support as ‘Relevant’, ‘Former Relevant’ or ‘Eligible’ children.

The Local Authority who looked after the child prior to the granting of the Special Guardianship Order is responsible for aftercare support, however it may be more appropriate for the young person to seek support where he/she now lives.

13. Special Guardianship Support

13.1 Legal context for payments and support

Each Local Authority must make arrangements for the provision within its area for a range of Special Guardianship support services. However, as with all children deemed 'in need' under Section 17, Children Act 1989, support services should not be seen in isolation from mainstream services and it is important to ensure that families are assisted in accessing mainstream services and are aware of their entitlements to tax credits and social security benefits in addition to what services might otherwise be offered. Additionally, targeted services (e.g. within education or youth provision) should also be considered where appropriate.

13.2 Purpose and Vision of Derbyshire's Scheme

Derbyshire County Council aims to promote the welfare and improve the outcomes for children and young people who, because they are unable to live with their parents, are being brought up by members of their extended families, friends or other people who are connected with them.

Derbyshire County Council is committed to supporting family/friend carers in a variety of ways.

The majority of children and young people can and will have their needs met using universal and targeted services. The Special Guardianship Order Allowance scheme recognises that some children and their prospective or actual permanent carers will have other needs and may have additional needs arising from their individual circumstances. Therefore the scheme exists to provide essential support to underpin arrangements for children and young people who are placed with Special Guardians. Special Guardianship support could for example include:

- Financial support (see Section 14).
- Services to enable children, Special Guardians and parents to discuss matters relating to the arrangements for the child.

- Assistance including mediation in relation to contact between the child and their parents, relatives or significant others.
- Therapeutic services for the child.
- Assistance to ensure continuance of the relationship between the child and the Special Guardian, including training to meet any special needs of the child, short break care, and mediation.
- Counselling, advice and information.
- If short break care is provided as part of a support package, the child would need to become 'Looked After' for the duration of the placement.

Special Guardianship Support Plans will be subject to the agreement of the District Manager responsible for that child if the child was previously looked after. Any proposed support plan which includes financial allowances will also need to be agreed by the Deputy Assistant Director.

If the child was not previously looked after, any proposed support plan which includes financial allowances must be agreed by the Deputy Assistant Director.

13.3 Who is Responsible for Providing Support?

Where the child was previously 'Looked After', the Local Authority that looked after the child has responsibility for providing support for the first three years after the making of a Special Guardianship Order. Thereafter, the Local Authority where the Special Guardian lives will be responsible for the provision of any support required and should be notified in writing of the move if known.

If a child was not 'Looked After', the Local Authority where the Special Guardian lives has the responsibility for providing support.

If support is requested, the assessment for that support should be undertaken by a Children and Families Team in the relevant Area Office.

However, on-going financial support which has been agreed before the Special Guardianship Order is made is the responsibility of the Local Authority that agreed it.

13.4. Eligibility to Assessment for Special Guardianship Support

Where the child is Looked After or was Looked After immediately prior to the making of the Special Guardianship Order, the following people MUST receive an assessment at their request:

- The child.
- The Special Guardian or prospective Special Guardian.
- A parent (but only in relation to their need for support with contact and/or discussion groups).

Where the child is not 'Looked After' or was not 'Looked After' immediately prior to the making of the Special Guardianship Order, anyone MAY be offered an assessment of their need for Special Guardianship support services but the following are particularly relevant:

- A child with respect of whom a Special Guardianship Order is in force.
- The Special Guardian or prospective Special Guardian.
- A parent.
- Any person with a significant ongoing relationship with the child.

If a Local Authority receives a request from a person whom it has a discretion to assess but decides not to carry out an assessment, it must notify the person requesting the assessment that an assessment will not be undertaken and why it will not be undertaken so that the person requesting the assessment can decide whether to make additional representations.

13.5. Assessment for Support

The level and extent of support should usually be established by undertaking a formal assessment at the point of completion of the Court report (or post order if a Special Guardian has requested an assessment). The report will need to consider the child's needs and the needs of the prospective Special Guardian, including financial needs.

The assessment should include the following:

- The developmental needs of the child.
- The parenting capacity of the Special Guardian or prospective Special Guardian.
- Family and environmental factors for the child.
- Comment on how life with the Special Guardian might be for the child.

- Any previous assessment of the child or Special Guardian that is relevant.
- The needs of the Special Guardian or prospective Special Guardian and their family.
- The impact of the Special Guardianship Order on the relationship between the child, parent and Special Guardian.

At the end of the assessment and once the necessary approval has been obtained, the Social Worker must inform the person requesting provision of its outcome, including:

- Information about the outcome of the assessment and the reasons for it.
- Where it relates to financial support, the basis on which this is determined.
- The services (if any) that the Local Authority proposes to provide.
- If financial support is to be paid, the amount and conditions attached.

13.6. The Special Guardianship Support Plan

Where an assessment identifies the need for on-going support services, a Special Guardianship Support Plan must be completed. If a need for ongoing support is not identified, this should be recorded on the child's electronic record and the family should be informed in writing.

Other agencies, such as education and health, may need to be consulted about the contents of the Plan.

The Plan should set out:

1. The services to be provided.
2. The objectives and criteria for success.
3. Timescales.
4. Procedures for review.
5. A named person to monitor the provision of services in accordance with the Plan.

Once the necessary approval has been obtained, the Social Worker must send the proposed plan to the person requesting support. A period of 28 days should be allowed for that person to make representations about the proposed plan. The Social Worker should also give

information to the person concerned about who to contact to obtain independent advice and/or advocacy.

Where representations are received, they should be referred to the relevant District Manager to decide whether the support plan should be amended or confirmed. If these relate to financial support, they should be referred to the Deputy Assistant Director. The allocated Social Worker must then write to the person concerned setting out the final plan.

13.7. Review of Special Guardianship Support Plans

Special Guardianship Support Plans must be reviewed taking into account the following:

- Any change of circumstances affecting the support.
- At whichever stage of implementation of the plan is considered most appropriate.
- In any event at least annually with regards to any financial payments made.

The reviews may be a paper exercise where there is no change or a minor change in circumstances. However, if there is a substantial change of circumstances (e.g. a serious change in the behaviour of the child) it would normally be necessary to conduct a new assessment of needs.

Any change to the Special Guardianship Support Plan will be subject to the approval of the relevant Manager. Local arrangements will determine whether any additional approval is required for changes to financial support.

If the Local Authority decides to vary or terminate the provision of support after the review, notice in writing must be given and the person concerned should be given 28 days to make representations.

14. Financial Support

The general principle should be that where a person is seeking to make a permanent and substantial commitment towards a child by means of a Special Guardianship Order, this commitment by the individual should generally include a willingness to meet costs associated with such a commitment. It is recognised however that in some circumstances and for children with whom the Local Authority have been actively involved, financial support may be required to enable permanence plans outside of Local Authority care to be made. A decision to provide a Special Guardianship Allowance can only be made in Derbyshire County Council by the Deputy Assistant Director.

In formulating this Policy due consideration has also been given to the responsibilities, roles and duties underpinning the respective orders and arrangements.

A Special Guardianship Order Allowance is set at the equivalent of the National Minimum Fostering allowance for a child of that age. It reflects the fact that the parental responsibility held by the Special Guardian can be exercised to the exclusion of any other parental responsibility holder. They are therefore ultimately responsible for all decision making relating to the child with only some limited statutory exclusions (see Section 5 Parental Responsibility). The greater statutory weight of the Special Guardianship Order is also reflected in the more rigorous assessment process which a prospective Special Guardian must undertake and which looks at not only short term issues but also long term issues to ensure (as best can be ensured) that the need for permanency is likely to be met by the placement.

- The amount of the Special Guardianship Order Allowance (See Regulations 6 & 7, The Special Guardianship Regulations 2005) does not include any reward element and is generally means tested (exceptions; see Section 10. Where the Special Guardian was previously the child's foster carer) and takes into account the financial resources of the Special Guardians (including any financial benefit arising from the placement of the child e.g. child benefit, tax credit or any benefit which has been or can be claimed for that child). Derbyshire County Council uses the Department for Education and Skills recommended standardised means test model. However, the application of the means test is not an end to the assessment. The assessment has to take account of the financial needs/resources of the child (if any) excluding mobility/attendance allowance/benefits related to disability. Also, the maximum payment under the National Minimum Fostering Allowance can be used as a basis for any means test. The assessment is to be reviewed annually to determine that the allowance is still appropriate and consistent with legislation and departmental policy. A higher allowance can also be paid in special circumstances, subject to assessment and the approval of the Deputy Assistant Director.

The payment of a Special Guardianship Allowance may affect receipt of benefits and advice should be sought of the appropriate Benefit Agency.

However, it is not the function of the Derbyshire County Council to accept responsibility for income maintenance.

Help in determining eligibility to benefits can be provided by;

Derbyshire's Welfare Rights Service who can be contacted on 0845 1202985 Monday to Friday 11.00 am to 4.30pm.

The Local Authority must also take account of any other grant, benefit, allowance or resource available to the person in respect of their needs as a result of becoming a Special Guardian of a child. Financial support ought not to duplicate any other payment available to the Special Guardian.

The Special Guardian will be asked to complete a Financial Assessment Form, which when completed should be passed to the CAYA Placements Finance Team. It is responsible for carrying out means assessments.

Means may be disregarded in relation to:

- The initial costs of accommodating a child who has been 'Looked After'.
- Recurring travel costs in contact arrangements.
- When cash is provided as part of a service rather than as part of financial support e.g. to provide a babysitter.
- Any special case requiring greater expenditure due to illness, disability, emotional or behavioural difficulties or the consequences of the past abuse or neglect of a child previously looked after.

The only circumstance when the Local Authority MUST disregard means is when providing financial support in respect of legal costs (including fees payable to a court in respect of a child who is 'Looked After' where the Local Authority support the making of the Special Guardianship Order).

14.1 Eligibility to Assessment for a Special Guardianship Order Allowance

Ordinarily, one of the following criteria must usually be met before Derbyshire County Council will consider undertaking an assessment for a Special Guardianship Order Allowance:

- That immediately prior to the Special Guardianship Order being made, the child/children were 'Looked After' by the Local Authority for a period of at least three months and the Special Guardianship Order application is part of his/her care plan and has been confirmed with the Independent Reviewing Officer through the review process;

- The child/children are subject to a Special Guardianship Order as part of a disposal of Care Proceedings or as a direct alternative to care proceedings, whether or not the child/children were 'Looked After' by the Local Authority for a period of at least three months;
- Where following an assessment of the circumstances of the child and carer, the Deputy Assistant Director agrees that the case is exceptional and the Local Authority supports the placement of the child with the person(s) taking the Special Guardianship Order.

The applicant must however live within the United Kingdom.

Anyone currently receiving a Special Guardianship Allowance from Derbyshire County Council who would not fit the above criteria will not lose their allowance with the introduction of this revised policy. However, it will continue to be reviewed annually to determine eligibility for an allowance.

Please note: If Derbyshire County Council opposes the Special Guardianship Order application but the applicant is successful in their application, the Local Authority will assess the applicant for eligibility of the allowance as if they had been in support of the Order.

14.2 Discretionary Payments

The Local Authority will consider a settling in payment and /or 'one off' payments under Section 17, for carers with a Special Guardianship Order who are experiencing financial problems. These discretionary payments can be considered whether the applicant would or would not be eligible for Special Guardianship Order Allowances. Eligibility for these Section 17 payments will be decided by the relevant District Manager applying the relevant statutory criteria under the Act.

14.3 Payment and Review Process

Once the means assessment has been carried out, the CAYA Placements Finance Team should send written notification of the outcome to the relevant Social Worker, who, with the agreement of their District Manager, must present this to the Deputy Assistant Director for approval.

For new cases, payment commences as from the date of the Special Guardianship Order. In other circumstances, it is from the date payments are approved. The Finance Team should then write to the Special Guardian setting out the amount of financial support agreed by the Deputy Assistant Director and information in relation to the following:

- Whether financial support is to be paid in regular instalments and if so, the frequency of payment.
- The amount of financial support.
- The period for which the financial support is to be paid.
- When payment will commence.
- Conditions for continuing payment and date by which conditions are to be met, i.e. returning Review Forms.
- Arrangements and procedure for review and termination.

A copy of this letter should be sent to the CAYA Placements Finance Team.

Where Special Guardians are in receipt of financial support, the Finance Team will write annually to them with a Financial Assessment Review Form to be completed, together with a request for information about any change in circumstances for the Special Guardian or the child. The case will remain open to the Council to deliver financial support. The plan would be a Child in Need Plan with the only need identified being the financial need and the service provided to meet this need would be "Special Guardianship Order - Financial Support". The Plan is recorded by the Social Worker before their involvement is completed. The Area Office is responsible for supporting the CAYA Placements Finance Team with information for the annual reviews where necessary. For the first annual review this will usually be the previous Social Worker. For any future reviews, the District Duty Service will assist. The reviews may be a paper exercise where there is no change or a minor change in circumstances. However, if there is a substantial change of circumstances, e.g. a serious change in the behaviour of the child, it would normally be necessary to conduct a new assessment of needs.

The allowance is reviewed annually and this is to;

- Establish that the child or young person continues to meet the requirements for an allowance and determine if the child or young person's needs have changed.
- Complete a financial review.
- Determine that the allowance is still appropriate and consistent with legislation and departmental policy.

When a review is due, a Financial Assessment Review form will be generated by the CAYA Placements Finance Team (regulated services) for completion by the carer. The team will review cases on an annual basis and will record any changes and outcomes onto the

electronic record as a financial review. The carers will be required to complete an allowance review questionnaire. This will include entitlements to child benefit and tax credits.

In order for allowances to continue up to 18 years of age, Derbyshire County Council will need to confirm that the young person:

- Continues to reside full time in the care of the Special Guardian.
- Is not in receipt of any benefits other than specific grants to support training/education in their own right but in this respect, an exception can be considered if the young person's circumstances are exceptional.
- And in addition that the financial circumstances of the carers in receipt of the allowance remain unchanged.

If an overpayment has been made (for example because it is found that the child is no longer resident or for any other reason), the Local Authority will recover the overpayment.

The Special Guardianship Order Allowance will change as the child or young person moves into the next age band as set out in fostering allowances or the child or young person's needs change.

Payment of the Special Guardianship Order Allowance will automatically end when:

- The child ceases to live with the Special Guardian (if they do so prior to attaining the age of 18.
- Reaches 18 years of age.

If any change in financial support is considered appropriate, the recommended change should be forwarded to the Deputy Assistant Director for a decision. Where a change is approved, the Special Guardian should be notified in writing of the proposed change, together with the reasons for the change and the Special Guardian must be given the opportunity to make representations.

Where Special Guardians do not return the Assessment Review Forms within the required timescale, a reminder letter should be sent, giving 28 days notice of the suspension of payments if the information requested is not received.

14.4. Notifications

The Special Guardianship Order Allowance is only payable in respect of the child who is subject to a Special Guardianship Order and who is resident with the person named in the order.

Those in receipt of allowances are to agree that they will inform Derbyshire County Council immediately of any significant changes in the family involving the carers themselves, their children and the child/children subject to the Special Guardianship Order.

Where information has been given orally, the carers must confirm the information in writing within seven days.

Derbyshire must be informed of the following:

- The child ceases to have a home with the person who holds the Order.
- The child ceases full time education or training and commences employment.
- The child qualifies for welfare benefits in his/her own right.
- Change of address.
- The child dies.
- There is a change in financial circumstances or the financial needs or resources of the child and/or the carer which may affect the amount of financial support payable to the carer.

The Area Office must notify the CAYA Placements Finance Team if they are informed of a change of address for the family to ensure that payment is sent to the correct address. They must also notify the CAYA Placements Finance Team if they are made aware that the arrangement has ended and the child is no longer living with the Guardian, so that payments can be stopped.

The CAYA Placements Finance Team must make a referral to Call Derbyshire if they receive information from the Guardian that raises concern about the child's welfare or if the Guardian fails to return the annual financial review form after the second reminder has been sent. Many of the children subject to a Special Guardianship Order are unable to live with their parents due to child protection concerns, it is therefore important that Call Derbyshire make the relevant Area aware if the child is no longer living with their Guardian.

15. Where the Special Guardian was previously the child's foster carer

Financial support does not ordinarily include the payment of remuneration to the Special Guardian for the care of the child. However, Regulation 7 of the Special Guardianship Regulations 2005 provides however 'that where the Special Guardian previously fostered the child and they received an element of remuneration in the financial support paid to them, that the Local Authority may continue to pay that element of remuneration for two years from the date of the Special Guardianship Order or longer if the Local Authority considers it appropriate'.

If financial support is requested by a former foster carer, Derbyshire County Council will determine the level of payment required (after deduction of income from universal or specific benefits) to initially maintain the fostering allowance at the rate received previously or otherwise agreed. If required, this payment might continue for the duration of the order. This additional element of support is not means tested and will rise in line with the annual increase in fostering allowances.

Christmas, birthday and holiday allowances will continue to be paid for two years following the granting of the Order. Where these have been agreed prior to introduction of these revised procedures and two years have already passed, save in the case of exceptional hardship, they will continue to be paid up until the next annual review.

Any enhancements that had been paid through Derbyshire's Children First Scheme (disability) in relation to a child's additional or specific needs will be paid for a transitional period of two years under Regulation 7, The Special Guardianship Regulations 2005 and will then be reviewed to determine whether the additional support is still required. In the case of the Foster Plus Scheme, payments will usually reduce over the two year period in order to assist the former foster carers to make the financial adjustment from fostering to the new legal status.

At the end of the two year period and following review by the child's District Social Care office, a decision will be made whether to continue enhanced payments, reduce them or cease payments. Payment of any on-going additional allowance beyond two years would need to be justifiable and reviewed annually to ensure that it remains appropriate. Professional advice may be sought to ascertain whether or not the exceptional circumstances continue to exist and whether the specific needs require additional financial support.

If the applicant is a foster carer from an independent fostering agency, the above would still apply unless a separate agreement is reached via a formal contracting process and through Cabinet approval.

Before any changes are made, the former foster carer must be given the opportunity to make representations.

16. Urgent Cases

Where a person has an urgent need of a service, the assessment process should not delay provision and arrangements can be made for support to be provided as a matter of urgency in appropriate cases. The Local Authority will need to review the provision as soon as possible after the support has been provided in accordance with the procedures set out above.

End