

From: Peter Oakford, Cabinet Member for Specialist Children's Services
Andrew Ireland, Corporate Director of Social Care Health and Wellbeing

To: Children's Social Care and Health Cabinet Committee - 10 November 2016

Decision No: 16/00087

Subject: **REVIEW OF MEANS TESTING FOR SPECIAL GUARDIANSHIP ORDER ALLOWANCES, ADOPTION ALLOWANCES AND OTHER RELATED ALLOWANCES**

Classification: Unrestricted

Previous Pathway of Paper: N/A

Future Pathway of Paper: Cabinet Member decision

Electoral Division: All

Summary: Kent County Council has a significant current and future financial commitment to children subject to Special Guardianship Orders and Adoption Orders where financial support has been agreed to be paid.

The current method of completing the financial means testing of claimants needs reviewing to ensure a more equitable process is applied. By introducing a fairer system, not focused on individual lifestyle choices, it is predicted that Kent County Council will reduce its expenditure on allowances as such choices will be self-funded by the claimants and not by the Local Authority.

Recommendation(s): The Children's Social Care and Health Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make a **RECOMMENDATION** to the Cabinet Member on the proposed decision (attached as Appendix 1) to:

- a) **REVIEW** the means testing for Special Guardianship Order Allowances, Adoption Allowances and other related Allowances; and
- b) **DELEGATE** authority to the Corporate Director of Social Care, Health and Wellbeing, or other nominated officer, to undertake the necessary actions to implement the decision.

1. Introduction

- 1.1 Kent County Council pays monetary allowances to Special Guardians and adopters in certain cases where an assessment has concluded that this is necessary to support the placement of the child. In such cases a financial

assessment is undertaken utilising an assessment framework provided by the Department for Education (DfE).

1.2 Financial support for Adoption and Special Guardianship is available under the provisions of the Adoption Support Regulations 2005, and the Special Guardianship Regulations 2005 (amended 2016).

1.3 Adoption and Special Guardianship Order Allowances are calculated according to a standardised means test, which is a guidance tool produced by the DfE. Applying this guidance the maximum payment per week, per child is equivalent to the Fostering Maintenance Allowance. Child benefit is deducted from this amount unless the family are in receipt of unemployment/ Income Support related benefits.

1.4 For example a family in employment would have their allowance calculated for a child under one year of age in the following way:

- The fostering maintenance element for a child under the age of two is £146.44 per week. For the purposes of this example maximum child benefit of £20.70 will be deducted. This means the maximum allowance payable by KCC would be **£125.74** per week.
- Fostering maintenance amounts also increase with the child's age so the maximum allowances paid for this child until the age of 18 would look like this (assuming maximum allowance was always paid and not including inflationary uplifts or increases in fostering maintenance).

Age Group	Per Week £	Per Annum £
Under 2 years	125.74	6538.48
2 - 4 years	130.08	6764.16
5 – 8 years	147.30	7659.60
9 – 10 years	147.30	7659.60
11 – 15 years	169.91	8835.32
16 – 28 years	203.30	10571.60

1.4.1 The accumulative total cost to the Council for this child, assuming an allowance continued to be paid until the age of 18 years, using today's figures, would be **£142,141.48**

1.4.2. If the family were not in employment, the cost would be greater as the child benefit element would not be deducted from the basic fostering amount. The cost for this child until the age of 18 would increase to **£160,440.28**.

1.5 The means test process takes into account the household's income and expenditure.

1.5.1 Household income is broadly calculated by adding up the household income from earnings and benefits and disregarding 20% of this amount. Various outgoings are allowed to be deducted, thus reducing the disposable income.

The equivalent income support rate plus 25% enhancement is then compared to this amount. The fostering maintenance element is then introduced to this figure to see whether there is sufficient disposable income left to offset any allowance.

- 1.6 For guardians/adopters with greater disposable income than the income support calculation, their allowance is reduced by 50p for every £1 they have of disposable income over and above the accepted minimum amount a household should have using the above formulae.
- 1.7 This means that after council tax, mortgage/rental costs and living costs (food, clothing and utilities for all household members) are deducted from available income no child placed with the adopters or guardians would have less than the minimum equivalent fostering maintenance available to them as this would be made up with household disposable income and KCC allowance payments.
- 1.8 It has been imperative to ensure that there are robust financial review mechanisms in place within the Children's Allowance Review Team (CART). This has included the introduction of a 12 week review after the legal order is made to ensure that guardians/carers/adopters have claimed all applicable state benefits, thus reducing expenditure.
- 1.9 In the current financial climate it is timely for the Council to consider the most effective and consistent approach to means testing. The current process, whilst vigorous, can be ambiguous and subjective. The proposals have been formulated in consultation with KCC finance colleagues and the advice of legal Counsel has also been sought. They are envisaged to reduce the current expenditure on means tested allowances by implementing a process that is fairer to all and is clearer with regard to what constitutes legitimate expenditure and disposable income.

2. Financial Implications

- 2.1 The Council's projected forecast expenditure on Special Guardianship Order (SGO) Allowances alone is likely to continue to increase per annum as the numbers of younger children subject to this type of order increase, meaning the financial pathway starts at a younger age.
- 2.2 The table below evidences the financial increases in allowances paid, in particular to special guardians.

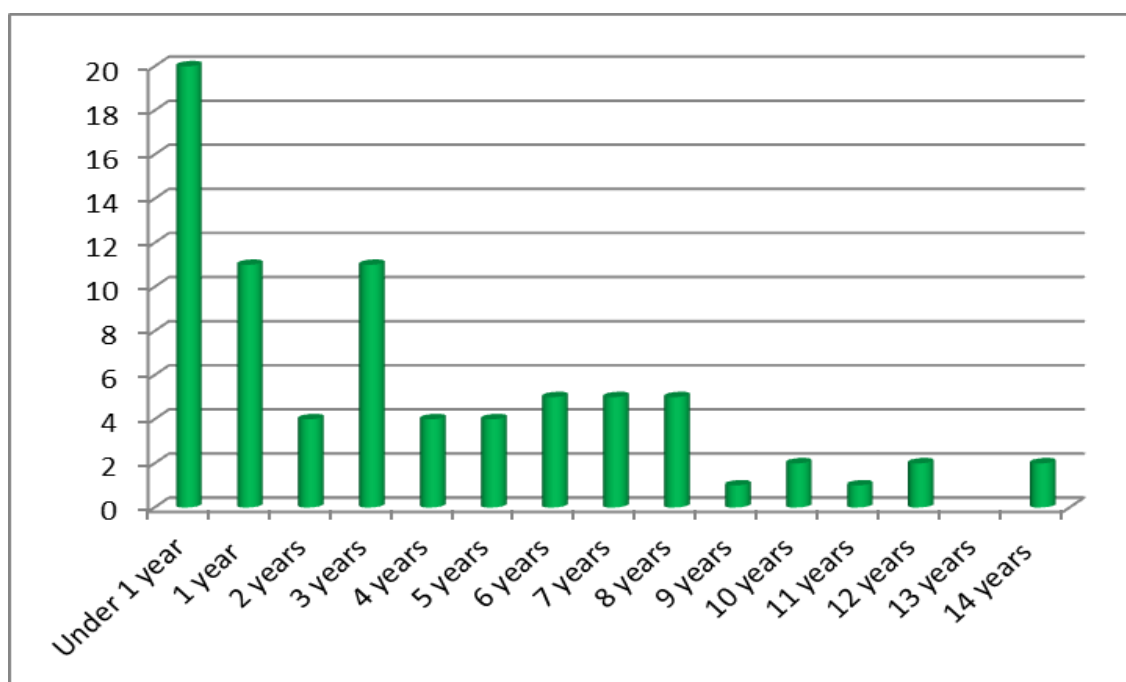
	Adoption		SGO	
	*£	*Orders with Payments	*£	*Orders with Payments
2012/2013	3,697,600	449	2,300,600	353
2013/2014	3,645,200	397	3,206,100	488
2014/2015	3,306,800	420	3,976,400	566
2015/2016	3,637,700	393	5,475,500	715
2016/2017	3,367,500	365	6,357,500	740

*£ = Outturn or Forecast Outturn (2016-17)

*Orders = No of orders at end of each Financial Year with a cost or current orders with a cost (201617)

2.3 Since the financial year of 2013/14 there has been a significant rise in SGO allowances being paid, with an increase of 252 cases receiving an allowance since then (some of this increase will have been attributable to CART moving children to the correct court order code within the budget and not all will be new cases). The approximate total expenditure of adoption and SGO allowance payments is forecast to rise to well above £9 million by 2017.

2.4 It is important to consider the ages of the children being made subject to Special Guardianship Orders as this places a significant financial commitment from the Local Authority to pay allowances over a longer period of time. The table below represents the new cases by age group between September 2014 and September 2015.



3. Policy Framework

3.1 The DfE guidance tool is widely used by Local Authorities across England as a basic interpretation of income and outgoings for the purposes of calculating an allowance. However the guidance is written to provide a platform for Local Authorities to build from and it is from this starting position that the Council needs to consider specific interpretations. Legal advice from Counsel of Coram Chambers affirms that it is perfectly reasonable for the Council to look to develop a clearer interpretation of this guidance for their own use in the means testing of allowances; the Counsel's advice is referred herein as the "legal position".

4. Consultation

4.1 A consultation exercise was carried out over the course of the summer with questionnaires being sent out to 728 households. Responses were received from 175 households. Respondents were asked to confirm if they agreed or disagreed with each element of the proposals. As an overall percentage of the cohort, the disagreement rate varied between 4% to 10%. The changes proposed have therefore been widely consulted on and the responses from those directly affected given careful consideration.

5. Proposals

5.1 Disability Living Allowance (DLA)

5.1.1 The DfE guidance states:

Financial support paid to adoptive parents or special guardians under the regulations cannot duplicate (or be a substitute for) any payment to which adopters or special guardians would be entitled under the tax and benefit system. We recommend that Local Authorities only include benefits that are currently being paid to members of the household. If the Local Authority believe that there are other benefits to which the household would be entitled, this should be pointed out to the adopters or special guardian.

5.1.2 Currently the Council does not consider DLA payments to be part of the household income when they are made to the child for whom the special guardianship or adoption allowance is paid. When other adults and children in the household are in receipt of this benefit KCC do include this within the income section.

5.1.3 Legal position: The legal obligation on the Local Authority when assessing means for ongoing financial support is set out in the Regulations.

5.1.4 In determining the amount of financial support, the Local Authority must take account of any other grant, benefit, allowance or resource which is available to the person in respect of his needs as a result of becoming a special guardian of the child.

5.1.6 The Local Authority must also take account of the following considerations:

- the person's financial resources, including any tax credit or benefit, which would be available to him if the child lived with him;
- the amount required by the person in respect of his reasonable outgoings and commitments (excluding outgoings in respect of the child);
- the financial needs and resources of the child.

5.1.7 However, the Local Authority has a discretion (i.e. it may) disregard means if it considers that it needs to provide financial support because **the child needs special care which requires a greater expenditure of resources than would**

otherwise be the case because of his illness, disability, emotional or behavioural difficulties or the consequences of his past abuse or neglect.

5.18 It follows that DLA received in respect of the child can and, except in very unusual cases where special financial needs arise, must be taken into account, but so too should specific costs associated with meeting the child's needs.

5.1.9 Proposed KCC position: Disregard the first 50% of any DLA paid which would not require any supporting evidence and for those wishing for the full amount to be disregarded they would have the option of providing receipted evidence of expenditure against the full amount of benefit.

5.2 Carers' Allowances

5.2.1 Carers' Allowance is an additional payment to support the care of the child. There is clear duplication of the allowance which is paid to support in the care of the child. There needs to be clearer guidance to adopters/guardians/carers that they must declare this benefit.

5.2.2 Legal position: Nothing in the statutory materials or guidance or even the non-statutory guidance justifies disregarding these allowances.

5.2.3 Proposed KCC position: The means test form is further developed to ensure this is being declared and included as income

5.3 Capital, Savings, and Investments (incl. Dividends)

5.3.1 Self-Employed

The non-statutory guidance which accompanies the model means test (Means Testing Guidance, MTG) states:

Where one (or both) of the parents or special guardian is self-employed, the only income which should be considered is 'drawings' as this is the equivalent of pay from an employer. Any profit from the business sitting in a bank account (and thereby not being reinvested) should be taken into account as capital under section 1iv: other sources of income.

5.3.2 Legal position: Annual business bank statements need to be provided along with an explanation of any drawings.

5.3.3 Proposed KCC position: KCC to request the last twelve months business account statements in order to properly calculate the interest paid and drawings taken from the business. KCC needs to move to a position where business operated out of personal business accounts is no longer acceptable as it is impossible to draw a distinction between personal income and business earnings.

5.4 Dividends and investments

5.4.1 KCC does not ask for evidence of capital, savings or investments in order to calculate the net monthly interest.

5.4.2 The Means Testing Guidance states:

Where the family receive income from capital, savings and/or investments, this should be assessed in terms of net monthly interest only, as paid. This is the income that is routinely available to the family, and should be clearly shown on statements/similar. Any interest received from Government Child Trust Funds should not be included in this section.

5.4.3 Legal position: It is entirely reasonable that evidence is requested. In the cases of dividends the annual Limited Company statement should be supplied along with their annual personal tax return. Annual bank statements should be obtained showing savings.

5.4.4 Proposed KCC position: KCC asks for annual bank statements to be submitted relating to capital, savings and investments. In relation to dividends the claimant should ask for a print out from the limited company to prove what they have received. A separate declaration box should be introduced declaring that all sources of income have been disclosed. All lump sums must be declared. KCC should divide the sum by 12 to reflect the coming year and add this amount to the available income to the household.

5.5 Child Benefit

5.5.1 KCC deducts child benefit from the allowance unless the family is on income support. KCC does not deduct child benefit from the family if they are a high earning family and are taxed on the child benefit they receive. This in effect means that KCC award them the equivalent of the child benefit since they pay this back via their taxes.

5.5.2 **Legal Position:** KCC can state that they have taken the decision that, where the Government has withdrawn a universal benefit and made it means tested, they will not pay to make up a government shortfall.

5.5.3 **Proposed KCC position:** KCC deducts the equivalent in child benefit from the fostering maintenance as it does to all lower earning working families to be fair and equitable.

5.6 Mortgages

5.6.1 There is a practice whereby some adopters and SGO holders have several mortgages. These are not mortgages associated with Buy to Let properties but are linked to the property where the applicant resides. These are usually either increases in borrowing against the original mortgage or are secured loans (thus becoming a second mortgage). Traditionally KCC has taken all these mortgages into account.

5.6.2 The MTG states:

Include mortgage payments, made up of capital and interest, and also including any endowment payments linked to the mortgage.

5.6.3 Legal Position: KCC could adopt a position of disregarding certain things i.e. once they have an SGO, we would not be meeting payments for any additional mortgage on the same property unless it relates directly to the child, e.g. disability related (ramps, wet room etc.) or the addition of a bedroom for the child etc. This can be justified on the basis that KCC needs to adopt a consistent approach across the recipient families of what is “reasonable expenditure and commitments” as required by the regulations.

5.6.4 Proposed KCC position: Only the existing mortgage of the property at the time of the making of the order should be taken into consideration. Subsequent increases to, or secured loans against the property should be disregarded.

5.6.5 KCC should not allow outgoings relating to second mortgages and other increased borrowing against the property for the purposes of debt consolidation, car purchase, holidays, furnishings or cosmetic improvements to the family home. However, there should also be provision for extension costs, such as the addition of a bedroom, if these are directly attributable to the young person/s now in their care as a result of the order.

5.7 Car Loans

5.7.1 KCC currently accept payments toward a car as a legitimate outgoing. Personal loans for the purchase of cars are not included in this. There is no decision regarding capping the limit of borrowing for a car, or of limiting the time period, so for example a family could continually upgrade their car to a new model and KCC would continue to accept this as a legitimate outgoing.

5.7.2 The guidance states:

Where the family pay regular monthly repayments on loans for housing improvement (e.g. extensions/new kitchens) or transport costs (e.g. new car), we suggest that these are included in this section. Local authorities will need to decide in relation to the individual circumstances as to whether a loan repayment should be included here.

5.7.3 Legal position: KCC could decide not to include car loans in the permitted expenditure section and could consider offering an additional sum of money to contribute toward travel costs so that when and how people spend it is up to them. People could choose whether to borrow money for a car and pay back with the allowance payments and could also choose how much they wanted to spend on a vehicle. If they spend more, that would be a personal choice. This figure would need to be based on evidence to show what level of travel costs are considered to be a reasonable level of expenditure.

5.7.4 Proposed KCC position: No car loans are taken into consideration as the fostering maintenance element already includes a 10% element of travel.

5.8 General Loans

5.8.1 KCC's current position is that personal loans cannot be included as legitimate outgoings.

5.8.2 **Legal Position:** It would be perfectly legitimate to say that a second loan or additional mortgage would only be considered if they are for work done on the home to maintain its integrity or an extension required to meet the needs of the child.

5.8.3 KCC could require evidence of the loan and expenditure of the above before agreeing to accept this outgoing.

5.8.4 **Proposed KCC position:** Loans should not be taken into account unless there is clear evidence of the purpose of the loan. It is proposed that the same criteria for secured loans/ second mortgages applies and that KCC adopt a position of allowing a loan for essential maintenance works associated to the property which would not be covered under the buildings insurance policy (these could include re-wiring, central heating and essential plumbing). There should also be provision for extension costs such as the addition of a bedroom, if this is directly attributable to the young person/s now in their care as a result of the order.

5.9 Pensions

5.9.1 **Deferring**

5.9.2 The rules for deferring for State Pension are changing if you reach State Pension age on or after 6 April 2016.

5.9.3 You cannot build up extra State Pension or lump sum payments for any days you also receive:

- Income Support
- Pension Credit
- Employment and Support Allowance (income-related)
- Jobseeker's Allowance (income-based)
- Universal Credit
- Carer's Allowance
- Incapacity Benefit
- Severe Disablement Allowance
- Widow's Pension
- Widowed Mother's Allowance
- Unemployability Supplement

5.9.4 **Legal Position:** Where a Central Government funded benefit, such as Job Seekers Allowance, is available to a carer but has not been claimed, whether through choice or ignorance, KCC does not deem it to be income received. This is consistent with the Guidance and MTG referred to above

5.9.5 The same principle would apply where a carer could take a benefit under a private policy but chooses not to do so, on the basis that it will be worth more in the long term.

5.9.6 **Proposed KCC position:** KCC should assess the pension income, irrespective of whether it has been deferred, as this is an accessible benefit and should have been claimed. A decision to defer, and thus increase the pension award in later years, is a personal choice.

5.10 Over payments on pension funds

5.10.1 The government sets the annual amount an individual can pay into a pension fund before it impacts on their tax paid. This figure increases as pension age nears.

5.10.2 **Legal Position:** KCC are entitled to say that additional pension funds/premiums will be disregarded unless in accordance with contracts i.e. a “commitment” under the terms of the pension. KCC would need to see contractual pensions as there is quite often an annual increase in premiums. A benchmark can be used on the basis of increases – whether these are additional voluntary contributions or standard pension payments.

5.10.3 **Proposed KCC position:** KCC apply exactly the same amount as the Inland Revenue. If an individual wishes to pay more, this extra is not treated as a relevant outgoings.

5.11 20% Disregard of earned income

5.11.1 Currently KCC disregard the first 20% of any earned income. This means that a significant amount of income which is available to the family is not included in the financial assessment. This is a recommended approach to calculation of allowances within the Standardised Means Test Model.

5.11.2 KCC also calculate the basic living costs to be 125% of Income Support levels (which is 25% above what the government determines is a reasonable standard of living). This means that the family, after also factoring the minimum fostering maintenance allowances never have less than 125% of income support levels for a family their size and, if earnings are low, they will generally be receiving the full amount of fostering maintenance. This is again part of the recommended approach within the Standardised Means Test Model.

5.11.3 **Legal position:** The statutory schemes and Guidance, which are binding on the Council, require the authority to have regard to all the carer’s income and set against it the ‘reasonable requirements’ for a household of that size.

5.11.4 The Council is not obliged to implement the Standardised Means Test which was first produced in 2005. It recognised in the guidance to the operation of that test that allowances should calculate in a way which is affordable to the paying authorities.

5.11.5 While the 125% figure provides a useful bench mark for assessing 'reasonable' core household needs, the continued exemption of 20% of income is not so obviously required to fairly calculate the allowances. The sample calculations demonstrate that for most families there will be no change in the allowances payable. It will however reduce the allowances to a higher earning household. It seems therefore justified that we should no longer disregard 20% of the earned income from this calculation.

5.11.6 **Proposed KCC position:** KCC includes 100% of earned income as money available to the household and no longer disregards 20% of this amount.

6. Legal Advice on Managing Change

6.1 Careful thought needs to be given to introducing major changes in the way the means test is approached, as families who have been assessed and in receipt of payments will have become used to a particular approach and may have made plans based on assumptions such as the way capital will be treated

6.2 It will probably be necessary to phase changes (for existing recipients) to allow families time to adjust. Otherwise there will be complaints based on breach of legitimate expectation and lack of consultation.

6.3 The regulations require that those who are assessed or being re-assessed must be given an opportunity to make representations before change is made to the payments they receive. The guidance suggests 28 days and those representations must be considered and reasons given for accepting or rejecting them. It should be expected that a change in the way that the means test is applied will throw up unexpected situations. Given that there are elements of discretion involved it would be prudent to allow for exceptions to be made by senior officers taking into account representations.

6.4 Regulation 13 of the *Special Guardianship Guidance* published in February 2016 states that Local Authorities must take into account all available income streams to the special guardian and must take into account reasonable outgoings and commitments. They must have regard to the maximum fostering maintenance element (which would have been payable if the child were fostered) when calculating how much allowance will be paid. These changes do not seek to challenge this and seek only to be clearer regarding allowed income and outgoings for households. Advice from Coram Chambers is that KCC can interpret the guidance and it is considered that the proposed changes do not have any legal implications for the council.

7. Equality Implications

7.1 An Equality Impact Assessment has been completed as part of the formal consultation exercise.

8. Conclusion

- 8.1 This report has sought to provide a robust framework for the purposes of means testing allowances. The current system allows for generous provision of lifestyle choices, such as second mortgages and new cars and the Council needs to develop the guidance from the DFES to be more compatible with the actual process of means testing.
- 8.2 The Children's Allowance Review Team is confident that all proposals are practicable and that this will provide a clarity with regard to income and outgoings which does not currently exist. The implementation framework for the changes would be 12 weeks from the date of endorsement by the Cabinet Committee. All recipients of allowances will be sent a letter setting out the new terms of the means test, thereby not receiving any less than a 12 week notice period.

9. Recommendation

9.1 Recommendation(s): The Children's Social Care and Health Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make a **RECOMMENDATION** to the Cabinet Member on the proposed decision (attached as Appendix 1) to:

- a) **REVIEW** the means testing for Special Guardianship Order Allowances, Adoption Allowances and other related Allowances; and
- b) **DELEGATE** authority to the Corporate Director of Social Care, Health and Wellbeing, or other nominated officer, to undertake the necessary actions to implement the decision.

10. Background Documents

Review of Adoption and Special Guardianship Allowances
<http://consultations.kent.gov.uk/consult.ti/childrensallowance/consultationHome>

11. Contact details

Report Author

Siobhan Hamilton
Team Leader, Children's Allowance Review Team (CART)
03000 410549
siobhan.hamilton@kent.gov.uk

Relevant Director

Philip Segurola
Director Specialist Children's Services
03000 413120
philip.segurola@kent.gov.uk