

## **Calculation of Allowances for Special Guardians, Child Arrangement Order and Adoption Allowances - the Government Calculator**

Report of Stuart Collins, Director of Children's Services

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Please note that the following recommendations are subject to consideration and determination by the Cabinet (and confirmation under the provisions of the Council's Constitution) before taking effect.

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### **1. Recommendations:**

Cabinet is asked to agree to the adoption of the government recommended calculator for allowance reviews for kinship care from 1<sup>st</sup> January 2024.

### **2. Summary**

- 2.1 Children that are unable to live with their birth families benefit from a stable, permanent family placement. This may be provided through Special Guardianship, the making of a Child Arrangement Order or through Adoption. Research undertaken by "Kinship" (formerly Grandparents Plus) has shown that families offering care through Special Guardianship Order (SGOs), Child Arrangement Order (CAOs) or Adoption Orders often face financial hardship and / or challenges because of their decision to look after those children. The council provides financial assistance which is subject to a means test.
- 2.2 The council has been using a locally devised formula for the calculation of kinship allowances. However, legal precedent and best practice suggest that the means test should be undertaken using the government recommended allowance calculator for SGO, CAO and Adoption Allowances which would result in the payment of higher levels of allowance. If the council does not adopt the government calculator, there is a risk that a court may order the council to do so together with the possibility that this would also necessitate the payment of arrears.
- 2.3 This report recommends the adoption of the government calculator for the payment of kinship allowances with effect from the 1<sup>st</sup> January 2024.

### **3 Background / Introduction**

- 3.1 The Department for Education (DfE) have a recommended calculator for kinship and adoption allowances. Devon County Council do not currently use this calculator. The recommendation is that this calculator is adopted.
- 3.2 Kinship allowances are based upon the standard fostering rate. The calculator provides a means test against which the percentage of the fostering allowance to

be paid is calculated. This will remain the same whether the government calculator is adopted or not.

## **4 Proposal**

- 4.1 Each Local Authority is required to publish a policy that details the support they will provide to special guardians, including financial support. The Kinship charity (formerly Grandparents Plus) have highlighted the disparity of financial support offered between Local Authorities. Devon's SGO policy has been revised to reflect the range of support available to Special Guardians and other kinship carers.
- 4.2 DCC has had a drive to ensure adherence to the regulatory requirement for annual financial reviews, improving service delivery and compliance. The DfE recommended calculator is a suggested model and is not a statutory requirement of Local Authorities. However, it is recommended and there has been increasing spotlight on its use by the courts and the local government ombudsman.
- 4.3 Plymouth City Council and Torbay Council have adopted the use of the DfE recommended calculator. Somerset County Council are in the process of scoping the option to pay all Special Guardians an allowance until the child is 18. Additionally, Somerset offer a 50% reduction in council tax for some qualifying Special Guardians.
- 4.4 Recent case law, Sarah Becker v Plymouth City Council, recommended that the DfE model means test and guidance is used when calculating SG payments. The high court judgment stated that dependents and SG's outgoings, including costs associated with the needs of the child, should be included in allowance calculations. DCC's current calculator does not consider these factors. Sarah Becker was awarded financial recompense from Plymouth County Council. This financial recompense was ordered to be backdated. Additionally, Plymouth City Council were ordered to backdate all special guardianship allowance payments based on the new calculations. The period for which the backdating is required is currently unknown.
- 4.5 Devon Council have received a letter from the Local Government Ombudsman asking why DCC do not follow the government recommendations. This letter has been anonymised and is attached for reference.
- 4.6 The Kinship charity have published a report in April 2022, stating that SG allowances should use the government (DFE) means test and be based on fostering rates.
- 4.7 The (BBC) Tonight program showed a film about the Plymouth ruling, increasing publicity around the recommended calculator. ITV news have also featured a program on kinship care. The public profile of kinship care in general is increasing with heightened scrutiny of processes and procedures.
- 4.8 The Local Government and social care ombudsman have published a report: Firm foundations: complaints about council support and advice for special guardians.

[Firm Foundations \(lgo.org.uk\)](http://lgo.org.uk)

- 4.9 The adoption of the DfE calculator is likely to have a positive outcome for most special guardians and kinship carers, particularly those on a lower income. A sample of SGO allowances were reviewed using the government recommended calculator. For those on the lowest incomes, both methods return an entitlement of the full allowance. There are likely to be minimal situations where those entitled to universal credit would not receive the full allowance. Over half of the sample set received universal credit or tax credits. This means that business support time could be significantly saved by not necessitating financial assessments for those people receiving universal credit. This is particularly relevant when the volume of financial assessments has led to a full time Family Practitioner time being diverted to assist with this for over a year. This time would be better dedicated providing practical support to the families we work with. The sample set indicates that around half of our Special Guardians would receive an increase in allowance payments.
- 4.10 Initial projections based on the current allowance rates indicate an additional annual cost of £412k.
- 4.11 DCC have recently been subject to a complaint requesting the DfE calculator is adopted. Aside from this formal complaint, there has been several enquiries about the model adopted by DCC.
- 4.12 The risk to DCC if the government calculator is not adopted is twofold. Firstly, there is a substantial and currently unknown financial risk. Should DCC be subject to a judicial review like Plymouth, there is a high likelihood that awards will be granted and back payments required. The timescale for back payments given to Plymouth is currently unknown. Projections indicate that this would be a financial cost of £412k for each year the back payments are required, based on current fostering rates and volumes. There is also the risk of reputational damage to DCC. The Plymouth ruling is well known and has featured in many media sources including The Guardian.
- 4.13 Encouraging kinship carers to apply for a special guardianship order for a child currently looked after by the council is usually in the best interests of that child. It provides them with a permanent home for the duration of their childhood. It also reduces the number of children for whom the council has a statutory responsibility and the costs of exercising that statutory responsibility.
- 4.14 The payment of a kinship allowance at a higher level is less than the total equivalent placement costs for a looked after child. There are also non cashable savings through the reduction in the number of looked after children (social work allocation, IRO time etc).

## **5 Options / Alternatives**

- 5.1 If the government recommended calculator is not adopted, there will be no definite or immediate financial impact. The Plymouth ruling has exposed a vulnerability to

reputational damage, legal challenge, and potential fines. We will also be open to increased criticism and complaints.

- 5.2 Adopting the recommended calculator has a projected annual financial impact of £412k . DCC will be pre-empting a potential enforced change in the future and limits exposure to legal challenge and potential fines. It will have a positive impact on the reputation of DCC. This is the preferred option.
- 5.3 It is proposed to introduce the government calculator from the 1<sup>st</sup> January 2024 o allow time for existing allowances to be recalculated. This will also align with the implementation of a proposed review of fostering allowances.
- 5.4 Consideration could be given to adopting the calculator for SGO and Child Arrangements Orders only. This would reduce the risk of legal challenge although it would not be eradicated. There are relatively few CAO, and these are and will continue to decrease to zero. Adopting the calculator for some but not all the allowances would increase the risk of human error and increasing operational processes.

## **6 Consultations / Representations / Technical Data**

- 6.1 Formal consultation has not taken place. DCC has received some queries relating to the method used to calculate allowances and a recent formal complaint has raised this as a concern.

## **7 Strategic Plan**

<https://www.devon.gov.uk/strategic-plan>

All three proposals presented to cabinet fit with the strategic priorities to:

- Be ambitious for children and young people
- Tackle poverty and inequality
- Improve health and wellbeing

## **8 Financial Considerations**

- 8.1 This proposal has a projected full year financial impact of £412k. Implementation from January 2024 would cost approximately £103k. Costs would be ongoing.
- 8.2 There is no allocated budget within 2023/24 to fund the conversion costs which would therefore contribute to existing budget pressures.

## **9 Legal Considerations**

- 9.1 Not adopting the government recommended calculator will leave DCC exposed to potential legal challenge, associated costs and fines.

## **10 Environmental Impact Considerations (Including Climate Change)**

This proposal will have a small positive impact on environmental considerations. The reduction in allowance calculations will result in less paper and reduced use of postage.

## **11 Equality Considerations**

This proposal goes some way to ensure equitability amongst kinship carers and adopters, irrespective of the Local Authority in which they reside.

## **12 Risk Management Considerations**

If this proposal is not adopted, there is a risk of legal challenge, associated costs and fines. There is also a risk of reputational damage to DCC by not following government recommendations.

## **13 Summary / Conclusions / Reasons for Recommendations**

13.1 The recommendation is to adopt the government calculator for all kinship allowances. The government is explicit that the model should apply to special guardianship and adoption allowances. Child arrangements order allowances are minimal in comparison and has limited benefit to exclude them with additional risks created. Additionally, the number of CAO allowances will not increase in the same way as SGO allowances. If the calculator is not adopted, DCC remains open to reputational and legal challenge and financial implications arising. This is particularly relevant in an environment where there is an increasing spotlight on kinship care services, especially the level of support offered to kinship carers. The government have recently made recommendations and a financial commitment to this area, and it is likely that more will be forthcoming.

**Stuart Collins** - Director of Children's Services

**Electoral Divisions:** All

Cabinet Member for Children's Services and Schools: Councillor Andrew Leadbetter

**Local Government Act 1972: List of background papers**

None

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