### Decision required

1. Cabinet is asked to agree the proposed implementation as outlined in section 7 of this report.

### Links to the Royal Greenwich high level objectives

2. This report relates to the Council’s agreed high level objectives as follows:

- **Support and protect children and families in need.** Special Guardianship Orders provide a permanence solution to children who cannot live with their birth parents. Local authorities are required to make arrangements for the provision of special guardianship support services. The Regulations also provide for the assessment of needs for special guardianship support services, and the planning and the reviewing of those support services.

- **A special guardianship order** is an order appointing one or more individuals to be a child’s *special guardian*. It is a private law order made under the Children Act 1989 and is intended for those children who cannot live with their birth parents and who would benefit from a legally secure placement that places **parental responsibility on the guardian**.

- **Special Guardianship** means that the child lives with carers who **have parental responsibility** for them until they are grown up. If the child was in the care of the local authority before the Special Guardianship Order was granted, they are **no longer children in the care of the Local Authority**. Children who were in the care of the local authority **immediately before the making of a special**
guardianship order may qualify for advice and assistance under the Children 10 Act 1989, as amended by the Children (Leaving Care) Act 2000 and the Adoption and Children Act 2002. In the context of special guardianship, to qualify for advice and assistance, section 24(1A) of the Children Act 1989 provides that the child must:

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

3. **Purpose of Report and Executive Summary**

3.1 This report reviews the financial payment scheme process for Special Guardians. This review has been undertaken to ensure that the Royal Borough of Greenwich has fully implemented the statutory guidance for local authorities under *Special Guardianship Regulations 2005* (as amended by the *Special Guardianship (Amendment) Regulations 2016*) further amended in January 2017. Special Guardianship Order allowances are only paid in a specific set of circumstances and are subject to a means test conducted by the Fostering Service.

4. **Introduction and Background**

4.1 This report sets out the current Special Guardianship allowances paid to approved Royal Borough of Greenwich Special Guardians and proposes changes to the determination of allowances for them. The number of Special Guardians is rising nationally year on year and this is also reflected in Royal Borough of Greenwich and therefore the spend is increasing.

4.2 Part 2 of the Adoption and Children Act 2002 provides the legal framework for special guardianship under the Children Act 1989. Section 115(1) of the 2002 Act inserted new sections 14A-G into the Children Act 1989. The new sections provide for:

- Who may apply for a special guardianship order
- The circumstances in which a special guardianship order may be made
- The nature and effect of special guardianship orders
- Support services for those affected by special guardianship

ITEM NO: 6
4.3 Royal Borough of Greenwich has a scheme of payments to Special Guardians who meet the financial threshold for a Special Guardianship allowance. In line with statutory guidance the key principle is that a fair core allowance should be set for all placement types.

4.4 The Council has adopted the national core allowance figure (London rate) recommended by Central Government in their National Minimum Fostering Allowance (NMFA) which sets a clear benchmark for arriving at such payments. This will ensure that there is no prejudice to meeting the child's needs with the type of order made, so that carers are not encouraged to choose one type of order over another for financial reasons.

4.5 Payments to Special Guardians are subject to means-testing.

4.6 Financial support is payable only where the Local Authority consider that it is necessary and appropriate. This support can include:
   - Special Guardianship Allowances (periodic payments paid monthly)
   - Contribution to settling in grant up to a maximum amount stipulated
   - Legal advice – one off paid at the public funding rates
   - Legal fees for representation in court - paid at the public funding rate up to a maximum amount stipulated
   - Contact expenses
   - Exceptional payments

4.7 The Special Guardianship Order allowance is paid according to the child's age and needs and the family's means. Royal Borough of Greenwich Service Delivery Procedure states that where an allowance is awarded it will be paid net of child benefit and any other benefits that can be received in respect of the child(ren) in the form of other benefits. However, since its inception, in practice only child benefit has been deducted, apart from a period in early 2017-18 when other welfare benefits received in respect of the subject child/ren by Special Guardians were taken into account.

4.8 In the past three years we have had a year on year increase in the number of Special Guardians being approved. This has also increased the spend for Special Guardianship allowances, as set out in the table below. Over three years the spend has increased by £476,130.56.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of SG's</th>
<th>No. of children</th>
<th>Total allowances</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>184</td>
<td>249</td>
<td>£1,868,507.88</td>
</tr>
</tbody>
</table>
4.9 *The increase is significantly higher year ending 2018/19, as this includes the repayment of £86,948.43 for child tax credits to Special Guardians where this had been deducted. This was as a result of not informing Special Guardians of this change to payments in a timely or transparent manner and the deductions being repaid.

4.10 We can forecast that the number of children subject to Special Guardianship will grow over the next few years. This is likely to represent an increased spend in excess of £150,000 year on year.

4.11 Current information held shows that 50 Special Guardians were eligible to claim child tax credit for 71 children over the course of 2018/19 amounting to a sum of £180,668.84.

4.12 If Royal Borough of Greenwich were to implement the statutory guidance fully and not duplicate any benefits received from elsewhere for children subject to Special Guardianship, then the annual spend would be less this amount – in 2018/19 the sum of £180,668.84.

4.13 **Special guardianship guidance** Statutory guidance for local authorities on the Special Guardianship Regulations 2005 (as amended by the Special Guardianship (Amendment) Regulations 2016) further amended in January 2017 states:

**Regulation 13: Assessment for financial support**

63. It is important to ensure that special guardians are helped to access benefits to which they are entitled. Local authorities should therefore endeavour to ensure that the special guardian or prospective special guardian is aware of, and taking advantage of, all benefits and tax credits available to them. Financial support paid under these Regulations cannot duplicate any other payment available to the special guardian or prospective special guardian and regulation 13 provides that in determining the amount of any 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.

4.14 Given the national picture of falling adoption numbers and increase in special guardianship there is likely to be an increase in spend on allowances over the next few years as numbers of children subject to a Special Guardianship Order increase; however the rise in spend would be significantly less with all

<table>
<thead>
<tr>
<th></th>
<th>2017/18</th>
<th>2018/19</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>209</td>
<td>220</td>
</tr>
<tr>
<td></td>
<td>289</td>
<td>303</td>
</tr>
<tr>
<td></td>
<td>£2,092,793.43</td>
<td>£2,344,638.44*</td>
</tr>
</tbody>
</table>
benefits being taken into account. In addition, Central Government increases its National Minimum Fostering Allowance rates annually which also affects the spend.

4.15 Enquiries were made with 6 other local authorities and all confirmed that they follow the statutory guidance in full and that they do not duplicate any benefits received from elsewhere for children subject to Special Guardianship.

4.16 The Council needs to ensure that the payments to Special Guidance are in line with statutory guidance and effective stewardship of public monies.

4.17 It was therefore proposed to implement the new financial scheme for all existing Special Guardians and for all new Special Guardians from the date of change. However, in order to strike the right balance between meeting our statutory obligations and financial management of the budget while minimising the disruption to existing Special Guardians and the children in their care, it was proposed that for the existing Special Guardians this should be on a phased basis.

4.18 Royal Borough of Greenwich has a duty to inform Special Guardians of any changes in their allowances. Special Guardians were first advised of the possibility of changes in August 2018. Since that time there has been further communication with Special Guardians in writing and at their monthly Special Guardians Support Group facilitated by the Fostering Service. The change to payments has been a regular topic and Special Guardians have had the opportunity to share their views about the changes.

4.19 All Special Guardians were written to individually about these changes in May 2019.

5. **Available Options**

5.1 There are three possible options around the implementation of the changes:

   Option 1 - the change to be brought in over a 12 month period in two stages in January 2020 and July 2020 with the first 50% accounted in January and the remainder 50% in July 2020.

   Option 2 - the change to be brought in over a two year period from November 2019 with 50% this year and 50% next year in November 2020.

   Option 3 - to implement the change in full from 1 April 2020.
6. Consultation

6.1 On 13th September 2019, the department consulted with Special Guardians regarding changes to the allowance in terms of Child Tax Credits. (Previous correspondence had been sent in August 2018, May 2019 and June 2019).

6.2 A letter outlining the options, as detailed above, for the implementation of changes was sent to all Special Guardians receiving an allowance.

6.3 Of the 220 Special Guardians we wrote to, 60 returned a response. The results were as follows:

<table>
<thead>
<tr>
<th>Option Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selected Option 1</td>
<td>32%</td>
</tr>
<tr>
<td>Selected Option 2</td>
<td>25%</td>
</tr>
<tr>
<td>Selected Option 3</td>
<td>12%</td>
</tr>
<tr>
<td>Selected 'Yes' to all 3 Options</td>
<td>8%</td>
</tr>
<tr>
<td>Selected 'No' to all 3 options</td>
<td>3%</td>
</tr>
<tr>
<td>No options were selected but comments given instead</td>
<td>20%</td>
</tr>
</tbody>
</table>

6.4 Twelve people did not select an option and gave comments instead. These 12 were unhappy with the decision to change the allowance as it would mean a reduction in their income.

6.5 Ten further people commented that this would not impact on them as they were not receiving benefits.

6.6 There will be an opportunity for any Special Guardian who is worried that these changes will have a significant impact on the children they care for to discuss this with the Fostering Service when consideration may be given to an exceptional payment.

7. Preferred Option

7.1 The preferred option following the consultation is option 1, the change to be brought in over a 12 month period in two stages in January 2020 and July
2020 with the first 50% accounted in January and the remainder 50% in July 2020.

8. **Reasons for Recommendations**

8.1 To bring the Council into line with statutory guidance.

9. **Cross-Cutting Issues and Implications**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Implications</th>
<th>Sign-off</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal including Human Rights Act</td>
<td>The Special Guardianship Regulations 2005 (as amended by the Special Guardianship (Amendment) Regulations 2016) provide the legal basis for the provision of support to Special Guardians. This support extends to financial support. Regulation 13 of the regulations sets out the factors that must be taken into account in any assessment to determine the level of financial support paid to a special guardian. Paragraph (2) of regulation 13 provides that ‘in determining the amount of financial support (for a special Guardian) 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 of the child’. The most recent statutory guidance in relation to Special Guardianship support was published in January 2017. Paragraph 63 of that guidance provides that ‘Financial support paid under these Regulations cannot duplicate any other payment available to the special guardian or prospective special guardian’</td>
<td>Ingrid Brown Assistant Head of Legal Services, 9th October 2019</td>
</tr>
</tbody>
</table>
in line with the regulations and statutory guidance. The proposal to phase the introduction of the implementation will minimise the immediate impact on those most affected. The consultation has ensured that the views of Special Guardians have been properly taken into account in relation to the proposals for implementation and the preferred option 1 is consistent with the majority view of Special Guardians responding to the consultation.

| Finance and other resources including procurement implications | The report notes that in order to be compliant with national guidance, the authority will need to take account of benefit levels for Special Guardians going forward.  

The effect of this will be to reduce the level of net payment made to the Special Guardian, compared with current levels, where there are benefits to take into account.  

For the year 2018/19, the difference would have been £180k, however, for future years it is not possible to quantify the effect as this will depend upon the income profile of the cohort entitled to receive the allowances, with the overall budget also impacted by the numbers of allowances.  

A decision to adopt option 1 will see 2020/21 accruing 75% of the total annual benefit, with full year effects thereafter. | Damon Cook, Director of Finance, 9 October 2019 |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Equalities</td>
<td>The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users. Special Guardians affected by this</td>
<td>Jo Hill - Interim Service Leader – Permanence</td>
</tr>
</tbody>
</table>
The proposal will already be in receipt of benefits from central Government for the respective child and will still receive some additional allowance from the Council.

All children subject to special guardianship will have their needs assessed and the proposed care arrangements considered by the Family Court. All such arrangements have been agreed as providing adequate care and this is facilitated through a SGO Support Services Plan. Special Guardians for children with additional special needs may receive an enhancement to their allowance which is unaffected by these proposals and in some circumstances receive Disability Living Allowance for the child which also is not taken into account by the Council and will be unaffected.

<table>
<thead>
<tr>
<th>Staffing establishment</th>
<th>No implications for staffing</th>
<th>Jo Hill - Interim Service Leader – Permanence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk management</td>
<td>This matter does not feature in the risk register</td>
<td>Jo Hill - Interim Service Leader – Permanence</td>
</tr>
<tr>
<td>Environment and sustainability</td>
<td>There are no implications for the environment.</td>
<td>Jo Hill - Interim Service Leader – Permanence</td>
</tr>
<tr>
<td>Community safety</td>
<td>There are no implications for community safety</td>
<td>Jo Hill - Interim Service Leader – Permanence</td>
</tr>
<tr>
<td>Health and Safety</td>
<td>There are no health and safety implications</td>
<td>Jo Hill - Interim Service Leader – Permanence</td>
</tr>
<tr>
<td>Health and wellbeing</td>
<td>Special Guardians provide permanent care for vulnerable children and therefore promote their long term health and well-being.</td>
<td>Jo Hill - Interim Service Leader – Permanence</td>
</tr>
</tbody>
</table>
10. **Report Appendices**

10.1 The following documents are to be published with and form part of the report:

- Appendix A:
  Royal Greenwich Children’s Services
  Service Delivery Procedures Special Guardianship Order Allowances

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