

## Foster Carer/Special Guardian Grant Agreements

### Frequently Asked Questions

This guide is intended to provide social workers in the Fostering Services team with key information about foster carer and special guardian grant agreements. References to 'foster carers' apply equally to special guardians (unless otherwise stated) and to a single foster carer or special guardian. References to the 'Council' are to The Nottinghamshire County Council and references to Legal Services are to the Council's legal team.

#### What is a grant agreement and how does it work?

A grant agreement is an agreement between the foster carers and the Council which sets out the rights and obligations of the parties in respect of payment of a grant.

Grant payments may be made in certain circumstances to overcome difficulties associated with finding homes for Looked After Children. Foster carers might need to extend or adapt their homes to provide additional bedrooms or more flexible living space to provide appropriate accommodation. The Council may decide to make a grant payment to facilitate the necessary building works. Before the grant is paid to the foster carers, they are required to enter into an agreement with the Council setting out the terms of the payment.

#### Which type of agreement should I use?

Foster Carer grants will now be dealt with on the following basis:

- Grants of up to £2.5K will be dealt with internally by the Fostering Team without sending to Legal Services and in these cases the simple form of agreement should be used.
- Only grants over £30K will go to Committee, grants below this threshold will be approved as operational decisions (such financial delegation to be approved by Committee ASAP).
- All grants over £10K will be subject to a legal charge secured on the foster carer's property (assuming they are the freehold owner and not a tenant).

#### What are the key points I need to consider?

Before seeking the appropriate approval for a grant, Fostering Services should consider the following:

1. How much should the grant be for? The Principal Sum is intended to cover all costs and expenses incurred by the foster carers in connection with the building works including VAT and legal fees, planning application fees, architects fees, internal decorations/fit out etc.
2. Ensure entering into correct document.
3. If the grant is for £10K+ and a legal charge is to be secured against the property, ensure that the foster carer is the freehold owner. We cannot protect the Council's investment by registering a charge on the title to the property where the foster carer is a tenant.
4. Similarly, we will need to ensure that there is sufficient equity in the property to secure our charge. We will need full details of any existing loans secured against the property including the amount outstanding. We may need to obtain a property valuation to check that there would be sufficient equity in the property to repay our charge should we need to enforce the claw back provisions in the agreement.
5. We recommend that foster carers obtain independent legal advice before entering into the agreement, particularly for grants over £10,000 where they will also be required to enter into a legal charge in favour of the Council. However, as stated in paragraph 1 above, payment of legal fees will come out of the grant amount.

### **Why does the Council take a legal charge over the foster carers' home?**

To protect the Council's investment and allow the Council to recoup the grant monies if things don't work out. For a grant of over £10,000, foster carers are required to enter into a legal charge with the Council. On completion of the grant agreement, the Council will make an application to the land registry for the charge to be registered against the foster carer's property. This is like a mortgage in favour of the County Council and is intended to protect the Council's investment should the grant need to be repaid under the terms of the grant agreement. The charge will rank behind any existing mortgage or charge registered against the property.

### **In what circumstances will the grant have to be repaid?**

Under the terms of the agreement, the Council has the right to request that the grant monies are repaid in certain circumstances. This is known as 'claw back'. The claw back provisions will be triggered in the following circumstances, which are set out more fully in clause 6 of the agreement:

- The foster carers stop fostering for whatever reason (although where the grant agreement is with two or more foster carers, it will only be repayable if both or all carers stop fostering);
- The foster carers are no longer occupying the property to which the grant applies as their only or main home;
- There is reason to believe that the grant monies have not been applied solely for the agreed extension or adaptation works at the property;
- The foster carers fail to disclose any material fact or information which ought in the opinion of the Council to have been disclosed as it would have affected the Council's decision to make the grant payment;
- A foster carer is declared bankrupt or has judgement for debt entered against them;
- A Bank or Building Society with a mortgage over the property takes steps for repossession;
- If the property is sold for any reason, although if the foster carer sells the property and all the proceeds from the sale are put towards the purchase of a replacement property which is of equal, or greater, value of the sold property (taking into account any increase in value after completion of the works) and which provides at least equally suitable accommodation for the Looked After Children, then the legal charge may be transferred to be secured against the replacement property for the remainder of the claw back period;
- If, in the opinion of the Council, one or both of the foster carers are incapable or likely to become incapable of carrying out their obligations under the agreement;
- If, in the opinion of the Council, either one or both of the foster carers is/are in wilful default of the agreement or have acted fraudulently.

These 'claw back' provisions are time limited and usually last for ten years from the date of the grant agreement. The amount to be repaid reduces each year so, for example, if the claw back period is ten years and claw back is triggered five years after the date of the grant agreement, the foster carers will have to repay 50% of the total grant amount. The grant then takes the form of an interest free loan. A repayment schedule is set out in the schedule to the grant agreement. The charge will be cancelled and can be removed from the title to the foster carers' property on the expiry of the claw back period.

### **What Information is required by Legal Services when sending through instructions?**

The information listed below is required by Legal Services when sending through instructions. Sending it at the outset will considerably speed up the process and allow the agreement to be completed without unnecessary delay:

1. Full names of foster carers;
2. Address including postcode of property;
3. Brief description of the building works including architects plans where available;

4. Copy of committee report and approval for grant and Court Order where applicable;
5. Copies of any necessary consents (where available) e.g. planning consent, building regulations approval. **Please note that it is the responsibility of the foster carers to obtain all necessary consents for the works;**
6. For grants over £10K, details of all existing mortgages and other loans secured on the property together with the amount outstanding. This information will be treated in the strictest confidence and will be used for legal for the sole purpose of establishing whether there is sufficient equity in the property to register the Council's charge;
7. For grants over £10K, consent letter from existing mortgagee to allow registration of Council's legal charge;
8. Builders' quotes for the works. We recommend that foster carers obtain at least three quotes from reputable building firms before appointing a builder to carry out the works;
9. Confirmation of solicitor acting for foster carers and contact details so that Legal can liaise with them directly.

### **How is the grant paid?**

Once the agreement and legal charge (if applicable) have been completed, the foster carers can draw down the grant monies by sending invoices to Fostering Services for payment. Fostering Services will then authorise payment into the foster carers' nominated bank account. Foster carers should keep copies of all invoices, quotes, receipts and approvals related to the works in a safe place so that they are easily to hand and to avoid delay in payment of the grant.

### **Who can I call?**

If you have any general or specific queries relating to foster carer grant agreements, please contact Emma Plumbley or Rachel Clack in Legal Services:

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