



# Special Guardianship Policy & Procedures

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## Contents

	Page
3.	Introduction
3.	Principles
3.	Who may apply
4.	Parental responsibility
4.	The circumstances in which a Special Guardianship Order may be made
4.	Planning Meeting
5.	Approval of Special Guardianship for Looked After Children and the role of the Adoption Panel
5.	Report to the Court
5.	Discharge of Special Guardianship Order
6.	Special Guardianship Support
7.	Entitlement to assessment for Special Guardianship Support
7.	Assessment for Support
8.	The Special Guardianship Support Plan
8.	Review of Special Guardianship Support Plan
8.	Financial Support
10.	Urgent Cases



## 1. Introduction

Special Guardianship provides another permanency option for children and young people unable to live with their birth family. The Adoption and Children Act 2002 (section 115) amended the Children Act 1989 (section 14) to introduce the legal framework for Special Guardianship. The Special Guardianship Regulations were issued in 2005 (amended) Regulations 2016 and the Special Guardianship Guidance updated in April 2012.

Special Guardianship is a legal status that can offer greater security without absolute severance from the birth family as in adoption. It addresses the needs of a significant group of children, who require stability and security but who do not wish to make the absolute legal break with their birth family that is associated with adoption.

Special Guardianship confers legal parental responsibility on the Special Guardian which is expected to last until the child becomes 18 years old. The court is also asked to take account of the child's needs for a lifelong relationship with their special guardian at the time the order is made. Special Guardianship Orders are likely to replace the use of Child Arrangement Orders in many cases the advantage being they offer greater stability and legal security for the child.

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

Special Guardians will have Parental Responsibility for the child. A Special Guardianship Order made in relation to a Looked after Child will replace the Care Order and the Local Authority will no longer have Parental Responsibility.

A Care Order 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 primary responsibility for decision-making under the Care Order.

## 2. Principles

This policy is based on the following principles:

- That looked after children are entitled to plans for their long term care, which aim for permanence and offer stability and consistency into young adulthood and keep placement moves to a minimum
- Children and Young People should not remain in the public care system if there are viable alternatives
- Statutory intervention should be kept at the lowest possible level

### **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.

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 out of the last five years
- Anyone who has the consent of all those with Parental Responsibility for the child
- Any other person, including the child, who has the leave of the court to apply

The parents of a child may not apply to become their own child's Special Guardians.

### **4. Parental Responsibility**

The Special Guardian will have 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 will continue to hold Parental Responsibility but the Special Guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian). The parents will, however, 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 everyone with Parental Responsibility, for example:

- The change of name of the child
- The removal of the child from the United Kingdom for longer than three months
- The sterilisation of a child

A Special Guardian can appoint a Guardian in their Will in the event of their death.

## **5. 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 3 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 will then have a duty to provide a report to the Court.

The only exception to the requirement for 3 months' notice is where the Court has granted leave to make an application and waived 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 to request an assessment of needs for support.

## **6. Planning Meeting**

Once notice has been received that an application for Special Guardianship is to be made, the notice 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 First Contact.

The Team Manager and allocated social worker, in consultation with Legal Services, 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 in line with the LA framework for the assessment of children in need, the suitability of the applicant(s), the proposed contact arrangements and the support needs (see Section 10 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, the DBS and other statutory checks undertaken for the assessment. Southend will undertake the same statutory checks as they would

for their own foster carers or adoptive families, given the long term basis of this order.

A full list of the matters to be included in the report is set out in the Schedule to the Regulations as provided by Regulation 21 (Special Guardianship Regulations 2005 and amended Regulations 2016)

## **7. Approval of Special Guardianship for Looked After Children**

If the child is Looked After and the application has been agreed as part of the child's Permanence Plan at a Review or in the Court arena, the assessments will usually have been undertaken and the outcomes agreed as part of the permanence planning for the child.

As soon as the social worker is aware of a potential Special Guardian, a viability assessment and draft support plan should be completed and presented to the Southend SGO Panel for initial consideration. At this point, should it appear that from the information provided at that stage, the placement could be a viable option for the child; the Panel will agree that it should proceed to full assessment and all statutory checks completed. A letter will be sent to the potential special guardian to inform them of the support likely to be offered should an order be granted, however this will not be formally agreed until the full final assessment is available as additional information may come to light within the assessment.

Once the full assessment is complete with a final support plan, this is presented back to the SGO Panel for final agreement of the support plan. At this stage a further letter is sent to the potential special guardianship, confirming the arrangements for support should an order be granted. The minutes from the SGO Panel will help to inform the decisions made at the final Legal Planning Meeting when agreeing the final Care Plan.

## **8. Report for the Court**

The social worker or social workers preparing the Court report should be suitably qualified and experienced.

Once completed, the Court Report should be submitted by the author(s) to the Team Manager, Service Manager and the Group Manager for Placements and Resources. At this stage the report and support plan will be presented to the Southend SGO Panel for formal consideration and agreement of support services to be offered.

Once approved it will be submitted to legal services for filing within the proceedings.

## 9. Discharge of Special Guardianship Order

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

- The Special Guardian
- The local authority in whose name a Care Order was in force before the Special Guardianship Order was made
- Anyone with a Child Arrangement Order in respect of the child before the Special Guardianship 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 Special Guardianship 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 Special Guardianship 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 Special Guardianship Order, vary or discharge the Order in the absence of an application.

## 10. Special Guardianship Support

The local authority must make provision for a range of Special Guardianship support services.

Special Guardianship support services are defined as:

- Financial support (see section 15, Financial Support)
- 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, respite care, and mediation
- Counselling, advice and information

Special Guardianship Support will be subject to approval and after an assessment for the need for such services (see Section 11 below).

Support services should not be seen in isolation from mainstream services and it is important to ensure that families are assisted in accessing universal services and are aware of their entitlements to tax credits and social security benefits.

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.

If the child is not Looked After, the local authority where the Special Guardian lives has the responsibility for Special Guardianship support.

Ongoing financial support, which has been agreed before the Special Guardianship Order is made, remains the responsibility of the local authority that agreed it so long as the family meet the criteria for payments.

Young People of 16-21 years old who were looked after immediately before the Special Guardianship Order was made qualify for advice and assistance with the Leaving Care Service (The Children Act 1989 (24)(1A))

Any young person who was Looked After immediately prior to the making of an order, will also be entitled to the Full Pupil Premium.

## **11. Entitlement 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, the following people **MAY** be offered an assessment of their need for Special Guardianship support services:

- The child
- The Special Guardian or prospective Special Guardian
- A parent

In all cases, whether the Special Guardianship child is looked after or not, the following people also **MAY** be offered an assessment of their need for Special Guardianship support services:

- A child of the Special Guardian
- Any person with a significant ongoing relationship with the child

If a local authority decides not to assess in cases where they have discretion as above, they must notify the decision in writing, including reasons for the decision, to the person making the request.

## **12. Assessment for Support**

The assessment should be based on the Assessment Framework and 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

Special Guardianship Support will be subject to the approval of the Group Manager for Placements & Resources and where financial support is being considered, is subject to the approval by the Special Guardianship Panel (comprising of Group and Service Managers from Quality Assurance, Fieldwork, Placements & Resources with recourse to legal advice).

At the end of the assessment and once the necessary approval has been obtained, the Group Manager for Placements & Resources who is Chairperson of the SGO Panel and Adoption Support Services Advisor will inform the person requesting provision of its outcome in writing, 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 proposed to provide
- If financial support is to be paid, the amount and conditions attached

## **13. The Special Guardianship Support Plan**

Where an assessment identified the need for ongoing support services, a Special Guardianship Support Plan must be completed.

Services and Agencies, such as education and health, may need to be consulted about the contents of the Plan as the plan may include support or services from a range of other agencies.

The Plan should be 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, and allow 28 days 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 advocacy. This is in addition to the letter sent by the chairperson of the SGO Panel.

Where representations are received, they should be referred to the Group Manager for Placements & Resources (and Special Guardianship Panel regarding financial support) to decide whether to amend or confirm the Plan. The Group Manager for Placements & Resources will then write to the person concerned setting out the final Plan.

All Special Guardians will be invited to attend the Southend SGO Support Group which meets bi-monthly. This group not only allows Special Guardians to meet together; express concerns and ask questions, but is also a conduit through which the local authority is able to monitor on a regular basis SGO placements and enable early intervention where difficulties arise and to provide targeted training.

Special Guardians are also invited to all Southend Foster Carer training.

## **14. 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

Following the making of the Special Guardianship Order, the Specialist worker for SGO and Group Manager for Placements & Resources are responsible for overseeing 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. Existing support may go up or down in light of any review.

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 as in Section 13.

Where any level of support is due to come to an end, a review needs assessment will be completed prior to the end of the support to ensure that the

child and family are fully supported to meet the needs at that time. Once complete the needs assessment will be presented to the Southend SGO Panel for consideration and a letter sent following this to confirm future arrangements for support.

## 15. Financial Support

The regulations state that financial support is payable to a Special Guardian or prospective Special Guardian to:

- Facilitate the arrangements for a person to become a Special Guardian of the child where the local authority considers this would be beneficial to the child's welfare, or
- To support the continuation of such arrangements after a Special Guardianship order is made.

Such support is payable only in the following circumstances:

- a) Where the local authority consider that it is necessary to ensure that the special guardian or prospective special guardian can look after the child
- b) Where the local authority consider that 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
- c) Where the local authority consider that it is appropriate to contribute to any legal costs, including court fees, of a special guardian or prospective special guardian, as the case may be, associated with:
  - The making of a special guardianship order or any application to vary or discharge such an order;
  - An application for an order under Section 8 of the Act;
  - An order for financial provision to be made to or for the benefit of the child;  
or
- d) Where the local authority consider that it is appropriate to contribute to the expenditure necessary for the purposes of accommodating and maintaining the child, including the provision of furniture and domestic equipment, alterations to and adaptations of the home, provision of means of transport and provision of clothing, toys and other items necessary for the purpose of looking after the child.

Regulation 13(2) does not allow local authorities to duplicate any payment which is available from other sources and, in assessing for support, the calculation must include any grants, benefits, allowances or resources available to the prospective special guardian.

Financial support will be considered against these criteria in each case and authorised by the Special Guardianship Panel.

Southend Borough Council's policy in relation to calculating proposed financial support under Special Guardianship Orders is means tested, as required by regulation, and takes into account the needs of individual children and the circumstances of those persons who have applied for a Special Guardianship Order.

Southend calculates financial support using the fostering allowance paid to its local authority foster carers as its reference in the following way:

- Southend pays between 96% & 98% of the Fostering Network recommended rates to its foster carers. Using the National Expenditure and Food Survey and the McClements Equivalence Income Scales the Fostering Network established the cost of raising a child in this country, for the average family.
- The Fostering Network recommended fostering allowance rates are established at 50% higher than the nationally recommended rate as a result of research into the costs of caring for a looked after child.
- The special guardianship allowance will be set between the core cost of caring for a child and the full fostering allowance dependent on the assessed individual needs of each child in acknowledgement that the child/ren may need special care which requires a greater expenditure of resources than would otherwise be the case.

The Council uses the Department for Education standard means test to calculate the Special Guardianship allowance that is payable. The allowance paid for the children will be reviewed annually, in line with regulatory requirements (Special Guardianship Regulations 2005(10)) and will take into account changing needs and circumstances.

In setting the Special Guardianship Allowance Southend acknowledges;

- the additional duties and tasks undertaken by foster carers which are not usually undertaken by Special Guardians
- The use of additional consumables in relation to foster children which lead to costs being incurred by foster carers which would not usually be incurred by Special Guardians.

The additional duties and tasks undertaken by foster carers which are not usually undertaken by Special Guardians include;

- maintaining an up to date, legible and accurate daily log
- preparing reports for Looked After Child Reviews
- maintaining the life story book and memory box, completing moving on tasks to support a child to move onto their permanent placement such as an adoptive placement
- being present for home visits by the child's Social Worker and supervising Social Worker, both announced and unannounced visits
- Complying with missing children's procedures
- attending and assisting with the implementation of Personal Education Plans,

- attending statutory initial and review health assessments and adoption medicals
- Working towards the Training, Support & Development Standards up to NVQ Level 3 ( Foster Carer's Job Description, Foster Carer's Handbook, Southend Borough Council)

Oldfield's (1997) authoritative UK study states that foster carers are required to undertake 14 hours additional fostering tasks per week. These are tasks which are not usually undertaken by Special Guardians.

The additional consumables of foster children which lead to costs being incurred by foster carers and which would not usually be incurred by Special Guardians include;

- Higher consumption due to overeating and hoarding food
- Increased wearing down and damage to clothes, furnishings and toys due to destructive behaviour
- Higher Laundry costs
- Increased transport costs as foster child may not be able to attend the local school
- Foster child will require a separate room on a family holiday

It is recognised that each child has very individual needs and as such the additional costs incurred by a Special Guardian will vary from case to case.

The Special Guardian must be prepared to fulfil their parental responsibilities throughout the child's childhood. Financial support will only be provided where the Special Guardian would be unable to provide adequately without such support. Where payable it can be paid until the child's eighteenth birthday if they remain in full time education. However, allowances are usually considered initially for 2-5 years as a transition payment to allow the special guardian time to adjust to the cost of caring for the child. The continuation of this payment will be considered as a part of the annual review of the special guardianship support plan (paragraph 14 page 10).

Special Guardianship Orders have been increasingly made nationally for children younger than was originally anticipated. For formally looked after young children support will initially be made, where needed, until they reach school age when it is hoped their Guardian can gain employment to fit in with schooling as is the case in most families. It should be noted that unlike many foster carers, Special Guardians are able to take up employment opportunities outside the home as they are not required to fulfil the same duties and responsibilities as foster carers and will not be requested to take additional children into the home by the local authority.

The Special Guardian's means will always be considered when on-going financial support is being considered (apart from when this is part of a fostering transition payment). They should therefore be asked to complete a Financial Assessment Form, which when completed should be passed to the Financial Officer responsible for carrying out means assessments. Once the means assessment has been carried out, the Finance Office should send written notification of the outcome to the relevant social worker to form part of the Special Guardianship Support Plan to be presented to the Special Guardianship Panel. Following this Panel, a letter will be sent to the Special Guardian setting

out the amount of financial support that has been agreed and information in relation to the following:

- Whether financial support is to be paid in regular instalments and if so, the frequency of payment
- Whether a single payment has been agreed
- 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 Finance Officer together with a copy of any subsequent Court Order relating to this.

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
- 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

Where the Special Guardians were previously the child's foster carers, Southend Borough Council will pay a reducing transition payment for two years, to ensure that the carer has time to make the necessary changes to their finances by claiming statutory benefits. The only circumstances 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.

Where Special Guardians are in receipt of financial support, the worker responsible for monitoring the Support Plan 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. This will be taken into account as a part of the annual review of the special guardianship support plan (Paragraph 14 page 10).

If any change in financial support is considered appropriate, the recommended change should be forwarded to the group Manager for Placements & Resources for consideration. Where a change is approved, the Special Guardian should be notified in writing of the change, together with the reasons for the change.

Where Special Guardians do not return the Assessment Review Forms within the required timescale, the worker monitoring the support plan should send a reminder letter, giving 28 days' notice of the suspension of payments if the information requested is not received.

The authority will allow for and take into account the exceptional needs of the child or any exceptional circumstances when considering financial support. A one off settling in payment can be agreed where this is required to support a

family in setting up a home for the child. In exceptional circumstances a further one off payment can be made at any stage where this is necessary to support a carer with a specific expense, over and above any expense that would be incurred by any other family. Such payments will be dealt with on a case by case basis, but will always be assessed based on the needs of a child. An example where this may be agreed is where there are additional expenses to support contact arrangements with birth family.

Where the court makes a Child Arrangement Order within proceedings prior to the making of an SGO, and by doing so the carers would be financially disadvantaged (the fostering allowance would cease), Southend will wherever possible, start any agreed SGO support at that stage rather than waiting for the final SGO to be granted.

The local authority will give consideration to offering financial support if the child would have likely become looked after had an alternative order not been made.

## 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 situation will then need to be reviewed as soon as possible after the support has been provided in accordance with the procedures set out above.

### a. Relevant Legislation and Guidance

Adoption and Children Act 2002  
Special Guardianship Regulations 2005  
Special Guardianship (Amended) regulations 2016  
National Minimum Adoption Standards 2011  
Special Guardianship Guidance updated April 2012  
Framework for the Assessment of Children in Need and their Families 2000



