

# Special Guardianship Policy



**achieving  
for children**

<b>Applies to</b>	Operational Area 1- Royal Borough of Kingston upon Thames and London Borough of Richmond upon Thames
<b>Review Board</b>	To be reviewed by Head of Service, Service Manager for SGO Service and Associate Director for Permanency
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## 1. Introduction

The Achieving for Children (AfC) Special Guardianship Policy is informed by the statutory guidance from the Department for Education. This means that recipients must have regard to it when carrying out duties relating to the provision of assessing and supporting special guardianship. This guidance replaces former statutory guidance issued by the Department for Education and Skills in 2005, amended 2016. A link to that guidance is as follows:

<https://www.gov.uk/government/publications/special-guardianship-guidance>

### 1.1 What is a Special Guardianship?

Special Guardianship is a legal status introduced by the Adoption and Children Act 2002.

A Special Guardianship Order fits broadly between a Child Arrangements Order and an Adoption Order in terms of the carer taking responsibility for the child. Special Guardianship offers permanency for the child.

Special Guardianship offers greater security than long-term fostering as it lasts until the child reaches 18, but it does not require the legal severance from the birth family that is the result of an adoption order.

A Special Guardianship order gives the Special Guardian parental responsibility for the child.

The Department for Education undertook a review resulting from widespread concern about the robustness of due process – particularly the assessment of suitability as set out by regulation.

The findings of the review reinforced the positive option of Special Guardianship. Amendments were made to the regulatory framework to require due consideration to be given to any significant harm that the child had suffered and the parenting capacity of the prospective special guardians to address those issues in their care of the child.

The amendment was then placed in primary legislation as Section 8 of the Children and Social Work Act 2017 and applied to any child subject to a Section 31A plan.

Children subject to a Special Guardianship Order are eligible as previously Looked After Children for additional support with their education (Sections 20(4) and 20A(4) of the Children and Young Persons Act 2008). For further information please see **Education of Looked After and Previously Looked After Children Procedure**.

Special Guardians have Parental Responsibility for the child and, whilst this is shared with the child's parents, the Special Guardian has the ability to exercise this responsibility without seeking

permission from the parents.

A Special Guardianship Order made with respect to a child who is the subject of a Care Order or for an order for contact to a child in care discharges those orders.

A Care Order, however, does not automatically revoke a Special Guardianship Order although the Special Guardian's exercise of Parental Responsibility is restricted as the local authority has primary responsibility for decision-making under the Care Order.

## **1. 2. 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 and must not be a parent of the child in question.

Subject to giving notice to the relevant local authority, the following people are entitled to apply for a Special Guardianship Order without needing to first seek the leave of the court:

- Any guardian of the child;
- Any person who is named in a child arrangements order as a person with whom the child is to live;
- Any person who has the consent of each person named in a child arrangements order as a person with whom the child is to live;
- Anyone with whom the child has lived for a period of at least 3 years (which need not be continuous, but must not have begun more than 5 years before, or ended more than 3 months before, the making of the application);
- A relative with whom the child has lived for a period of at least 1 year immediately preceding the application;
- Where the child is in the care of a local authority, any person who has the consent of the local authority;
- Any person who has the consent of all those with parental responsibility for the child;
- Any other person, aged 18 or over (other than a parent) may apply.

## **1.3. Parental Responsibility**

The Special Guardian will have Parental Responsibility for the child and, subject to any other order in force, will have clear responsibility for the day-to-day decisions about caring for the child to the exclusion of anyone else who might have Parental Responsibility (apart from another Special Guardian). The day-to-day decision also includes promoting and/or supervising contact with birth parents as directed by Court and/or in line with an agreed care plan, Any changes or review of this contact is done between the Special Guardian and the parent that holds Parental Responsibility.

The child's parents will continue to hold Parental Responsibility but their exercise of it will be limited. The parents will, however, retain the right to consent or not to the child's adoption or

placement for adoption. The Special Guardian must also take reasonable steps to inform the parents if the child dies.

## **2. Values, principles and objectives**

Special Guardianship Order is an alternative legal status for children that offers greater security than long-term fostering but without the absolute legal severance from the birth family that stems from an adoption order.

A Special Guardianship Order gives the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing. The child will no longer be looked after by a local authority. It provides a firm foundation on which to build a lifelong permanent relationship between the child and their carer. The child will be legally secure. It preserves the basic link between the child and their birth family. It can be accompanied by access to a full range of support services, including where appropriate, financial support.

Some minority ethnic communities have religious and cultural difficulties with adoption as it is set out in law a Special guardianship order reflects this religious and cultural diversity.

## **3. Legal Status**

In addition there are certain steps in a child's life which require the consent of everyone with Parental Responsibility or the leave of the court, for example:

- Causing the child to be known by a different surname; or
- Removing the child from the United Kingdom for longer than 3 months.

The court may, at the time of making the Special Guardianship Order, give leave for the child to be known by a new surname and/or to be removed from the United Kingdom for longer than 3 months, either generally or for specified purposes.

For the avoidance of doubt, a child is any child or young person under the age of 18 years.

## **4. 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 receiving the

notice 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.**

#### **4.1 What does the SGO assessment cover?**

The SGO assessment covers:

- An assessment of the current and likely future needs of the child (including any harm the child has suffered and any risk of future harm posed by the child's parents, relatives or any other person the local authority considers relevant);
- The nature of the prospective Special Guardian's current and past relationship with the child;
- An assessment of the prospective Special Guardian's parenting capacity including:
  - Their understanding of, and ability to meet, the child's current and likely future needs, particularly any needs the child may have arising from harm that the child has suffered;
  - Their understanding of, and ability to protect the child from any current or future risk of harm posed by the child's parents, relatives or any other person the local authority consider relevant, particularly in relation to contact between any such person and the child;
  - Their ability and suitability to bring up the child until the child reaches the age of eighteen.
- An assessment of the proposed contact arrangements and the support needs in relation to contact
- The assessment of the applicants should include their medical history, personal and employment references and the Disclosure and Barring Service and other statutory checks undertaken for the assessment: such as local authority checks, certificate of good conduct when an applicant has lived overseas, ex-partner checks and nursery/school references. Any previous assessments undertaken in respect of the prospective Special Guardian
- Evidence of a detailed understanding of the nature, implications, duties and responsibilities of the order for the prospective Special Guardians.
- Evidence of the understanding that may result as the child and the prospective Special Guardian grow older.
- Any likely impact the Special Guardianship Order may have on relationships between the child and parent.

## 4.2 What to expect/ next steps

Before the assessment, the prospective carers/ Special Guardians are likely to have been part of a viability assessment. If the outcome of this viability assessment is that a full assessment is to be undertaken, prior to the Planning meeting the prospective carers/ Special Guardians should be provided with full information, including:

- a copy of the completed viability assessment, regardless of its outcome
- a letter should be sent explaining the:
  - Expectations of the carers and what they should think about during the process.
  - What the assessment will involve, such as:
    - balance the strengths families may have;
    - any existing relationships they have with the child
    - the significance for the child of remaining within their family and network, against the carers' capacity to meet the assessed needs
    - the challenges that a particular child may bring on a long-term basis and until their 18th birthday.
  - The time and commitment needed from them; and
  - Prepare the key documents that they will need to provide for AfC undertake the necessary policy, health and financial assessment.
- Offer opportunities for the prospective Special Guardians to attend preparation training.

Where a full assessment is undertaken, it is to be expected that this will usually require a 3-month time scale.

## 4.3 What information will prospective special guardians be provided with?

People thinking about becoming special guardians will be provided with clear information to help them make informed choices. This should include:

1. Information about Special Guardianship support services and how to request an assessment of needs for support.
2. Planning Meeting, once notice (if private application) or referral has been received that Special Guardianship assessment is required. The information should be passed on to the Special Guardianship Team. If the child is not previously known, arrangements must be made for the case to be allocated to a social worker. If Children's Social Care are involved with the child, the child's allocated social worker should arrange a planning meeting as soon as practicable after referral is received by the Special Guardianship team. In attendance at the planning meeting should be the child's social worker (if one is involved) Special Guardianship social worker and the applicant (s).
3. 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.

4. The prospective carers should have time to read the assessment report before it is filed and comment on the report.
5. Following the filing of the report, the prospective carers should be given the opportunity to seek independent legal advice to understand fully the implications of any Orders made and if need be, make applications of their own.

## 5. Special Guardianship Support Services

Under section 14F of the Act, as amended, the local authority must make arrangements for the provision of special guardianship support services.

Children who were looked after by a local authority immediately before the making of a special guardianship order may qualify for advice and assistance under the Children 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.

The relevant local authority should make arrangements for children who meet these criteria to receive advice and assistance in the same way as for any other child who qualifies for advice and assistance under the Act, as amended. Regulation 22 provides that the relevant local authority is the one that last looked after the child.

Local authorities are required to make a range of support services available in their area to meet the needs of people affected by special guardianship. Special guardianship support services are defined as:

- financial support (regulation 3(1)(a)).
- services to enable groups of children for whom a special guardianship order is in force or in respect of whom is being formally considered, special guardians and prospective special guardians, and parents of the child to discuss matters relating to special guardianship (regulation 3(1)(b)).
- assistance, including mediation services, in relation to contact between the child and their parents or relatives or any other person with whom the child has a relationship that the local authority considers to be beneficial to the welfare of the child (regulation 3(1)(c)).
- therapeutic services for the child (regulation 3(1)(d))
- assistance for the purpose of ensuring the continuance of the relationship between the child and his special guardian or prospective special guardian, including training for the special guardian or prospective special guardian to meet any special needs of the child; respite

care; and mediation in relation to matters relating to special guardianship orders (regulation 3(1)(e)); and

- counselling, advice and information (section 14F(1)(a) of the Act).

The local authority should take into account the similar services already being delivered in their area, such as adoption support services, and plan the provision of special guardianship support services accordingly.

Special guardianship support services should not be seen in isolation from mainstream services. It is vital to ensure that children and families involved in special guardianship arrangements are assisted in accessing mainstream services and are aware of their entitlement to social security benefits and tax credits as appropriate.

Other requirements regarding provision of services:

- Regulation 3(2) provides that the provision of any services other than counselling, advice and information may include the local authority giving a person assistance in cash where the local authority considers this appropriate. For example, giving a special guardian cash to pay a babysitter so they can have a break for an evening or money for petrol where a contact visit has been arranged. When cash is provided in this way it should not be means tested as it is being provided as part of a service rather than as financial support.
- Regulation 3(3) requires that, if respite care consists of the provision of accommodation, this must be accommodation provided by or on behalf of a local authority under section 23 of the Act (accommodation of looked after children) or by a voluntary organisation under section 59 of the Act. This means that arrangements by a local authority for respite care must involve the child being looked after for the duration of the period of respite care. This requires that appropriate safeguards are in place during the respite care and that any foster parent providing respite care has been approved under the Fostering Services Regulations 2002.

In addition to the support provided by local authorities outlined above, in May 2015, the government launched the Adoption Support Fund in England to reduce the gap between adoptive children needing therapeutic services and receiving them, ultimately to improve outcomes for young people and families. In April 2016, the Fund was extended to cover therapeutic support for children living in England, who were previously in care immediately before the making of a Special Guardianship Order. Based on the assessment of needs, local authorities can apply for funding from the Adoption Support Fund and further information is available at:

<http://www.adoptionsupportfund.co.uk>.

The local authority where the special guardian lives is responsible for undertaking an assessment of need and provision of any special guardianship support services in response to that assessment. The only exception to this is where a child was looked after before the special guardianship order was made.

It is important to ensure continuity for the child and family in the early stages of the currency of the order. Regulation 5 provides that the assessment and provision of services for the child, the special guardian and any children of the special guardian all remain the responsibility of the local authority where the child was last looked after for three years from the date of the order. This rule applies wherever the family lives during this period. If the family do move during the three years or there is any other significant change in their circumstances, the local authority may wish to undertake a reassessment and alter the support plan accordingly, including any contact arrangements that are part of the plan. Any time after the first three years from the date of an order when the child was previously looked after.

When the three year period from the making of the special guardianship order has expired, the local authority where the special guardian lives is responsible for assessing and providing support services.

Where the child who is the subject of the order was not previously looked after. In these cases the local authority where the special guardian lives is always responsible for assessment and support. This includes assessment and any support that is needed by the child's relatives who may live elsewhere. If the special guardian and his family move, then the responsibility passes to the new local authority. The local authority where the special guardian previously lived should cooperate as needed to ensure a smooth transition for the child.

Ongoing Financial Support. A distinction is made between ongoing financial support (financial support that is paid on a regular basis) which was agreed before the special guardianship order was made and other support services. The assessment and provision of such financial support will remain the responsibility of the local authority who originally agreed to it for as long as the family in question qualify for payments. This distinction has been made because financial support can be paid without direct contact. Regulation 5 also provides that the local authority may provide services to people outside their area in other circumstances where the authority considers it appropriate. For example, transitional arrangements by the originating authority where a family moves to allow time for the new authority to review the family's existing plan without a break in service provision.

## **6. Provision of Financial Support**

A distinction is made between ongoing financial support (financial support that is paid on a regular basis) which was agreed before the special guardianship order was made and other support services. The assessment and provision of such financial support will remain the responsibility of the local authority who originally agreed to it for as long as the family in question qualify for payments. This distinction has been made because financial support can be paid without direct contact. Regulation 5 also provides that the local authority may provide services to people outside their area in other circumstances where the authority considers it appropriate. For example,

transitional arrangements by the originating authority where a family moves to allow time for the new authority to review the family's existing plan without a break in service provision.

A financial means test assessment will be completed annually where special guardians are provided with financial support.

Please refer to Achieving for Children Payment of Adoption SGC/ AO Policy for details of financial support for special guardians.