

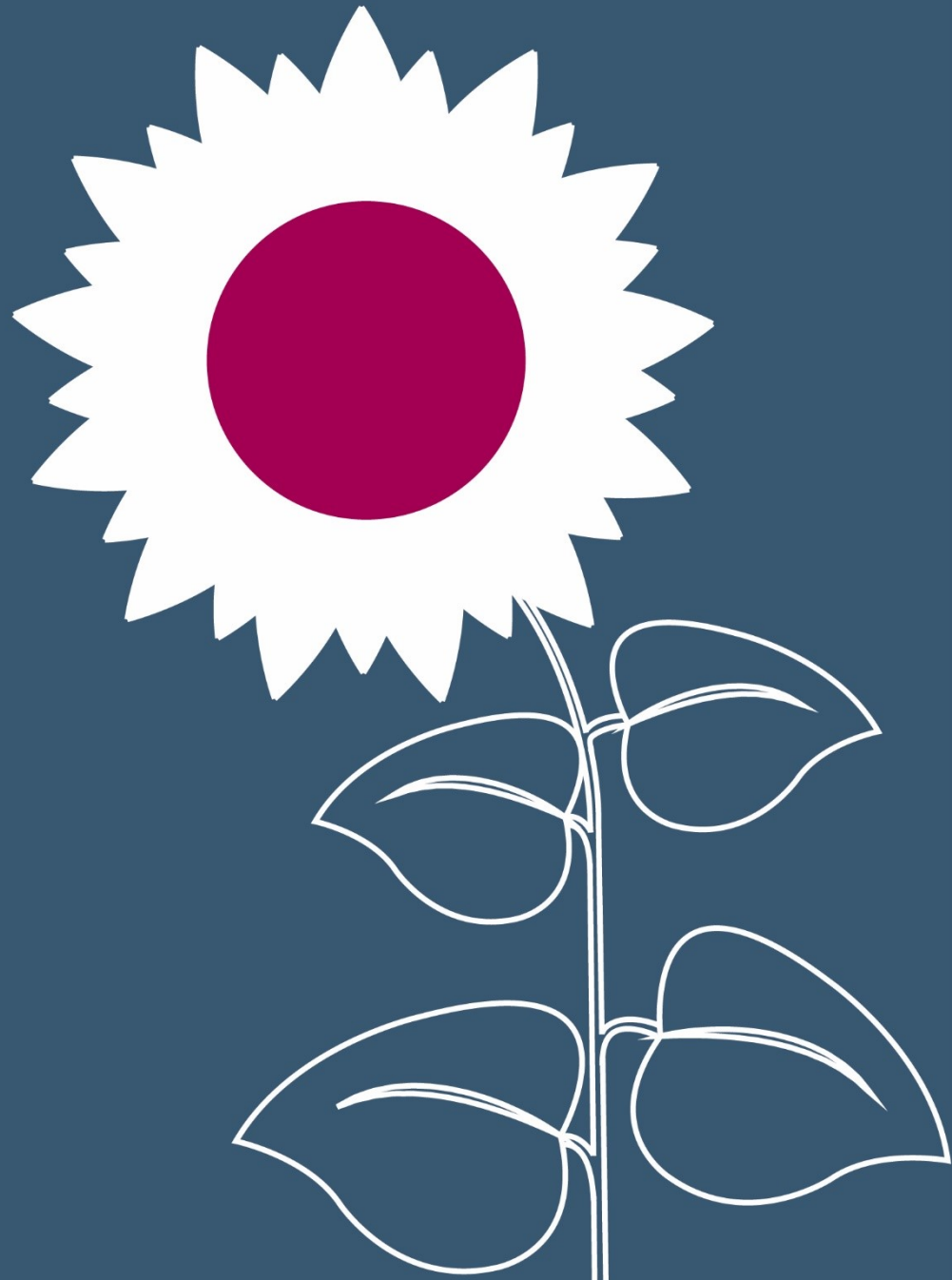


City of
Stoke-on-Trent

Special Guardianship Orders

Tri x 5_3_1 (18 April 2023)

Review December 2023



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Relevant guidance

- DFE, Special Guardianship Guidance (January 2017)
- Adoption Support Fund
- Family Justice Council: Interim Guidance on Special Guardianship, (Family Justice Council, May 2019)
- Recommendations of the Presidents Public Law Working Group, Sub Group on Special Guardianship, published June 2020
- Local Government Finance Act 1992

1 Introduction

Special Guardianship offers an option for children needing permanent care outside their birth family. It can offer greater security without absolute severance from the birth family as in adoption.

It can meet the needs of a significant group of children, mainly older, who need a sense of stability and security but who do not wish to make the absolute legal break with their birth family that is associated with adoption.

It also provides an alternative for achieving permanence in families where adoption, for cultural or religious reasons, is not an option.

A Special Guardianship Order offers greater stability and legal security to a placement than a Child Arrangements Order.

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 can be 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.

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.

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 three years (which need not be continuous, but must not have begun more than five years before, or ended more than three months before, the making of the application);
- A relative with whom the child has lived for a period of at least one 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 for a Special Guardianship Order if he or she has the leave of the Court to make the application.

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 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 (see Section 16, Special Guardian Duty on the Death of the child).

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 three 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 three 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.

5 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.

The allocated social worker 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 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);
- An assessment of the prospective Special Guardian's parenting capacity including:
 - i. 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;
 - ii. 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;
 - iii. 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 (see Section 11, 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 and the Disclosure and Barring Service and other statutory checks undertaken for the assessment, please see appendix 4.

6 Approval of Special Guardianship for Looked After Children

6.1 General

If the child is looked after and the application has been agreed as part of the child's Permanence Plan, the assessments will usually have been undertaken and the outcomes agreed as part of the permanence planning for the child, in which case there will be no need to hold a planning meeting.

The Special Guardianship Assessment should be signed off by the relevant Strategic Manager for the service in which the assessment is being prepared. All Special Guardianship financial agreements presented as an outcome for a Looked After child, must be approved by the Permanency Panel.

6.2 Special Guardianship applications in care proceedings

Interim Guidance on Special Guardianship, (Family Justice Council, May 2019) has confirmed that alternative potential carers should be identified at an early stage – including through pre-proceedings where possible and by convening a Family Group Conference. Nevertheless, identification of carers should not be as a result of parent's approval/disapproval but should focus on the child's interests.

However, there is recognition that some applicants may be identified, or come forward, late in proceedings and the Court will need to give careful consideration with regard to a possible extension of the 26-week timescale.

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

Assessments should be evidence-based and child-focussed. Before the assessment, the prospective carers should be provided with full information about:

- i. What the assessment will involve;
- ii. The time and commitment needed from them;
- iii. A letter should be sent explaining the expectations of the carers and what they should think about during the process.

The assessment should carefully balance the strengths families may have; any existing relationships they have with the child and the significance for the child of remaining within their family and network, against the carers' capacity to meet the assessed needs and the challenges that a particular child may bring on a long-term basis and until their 18th birthday.

Final recommendations should not be made until the essential tasks and activities for a full family and friends' assessment are completed.

The prospective carers should have time to read the assessment report before it is filed and comment on the report.

Following the filing of the report, the prospective carers should be given the opportunity to seek independent advice and legal advice to understand fully the implications of any Orders made and if need be, make applications of their own.

A Special Guardianship Support Plan will need to be provided around the time of filing the Special Guardianship Order report and its recommendations, detailing the support to be provided to the carers and the child and include contact for the child with their birth parents. The potential applicants should be able to seek legal advice about the Support Plan. The final Support Plan is signed off as agreed at the Permanency Panel.

7 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 their line manager(s) for approval.

The Court is unable to make a Special Guardianship Order unless and until it has received a Special Guardianship Report; however, where the bulk of the information required is already before the Court in another format, the local authority is not required to start from scratch. Instead, the local authority should be directed to file a report, which will fulfil the requirements by providing any missing information and by setting out the remaining information in the form of cross-references to the information already before the Court in other reports.

Save for cogent (strong and clear) reasons, a Supervision Order should not be made alongside a Special Guardianship Order.

8 Variation and Discharge of Special Guardianship Order

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

- The Special Guardian (or any of them, if there are more than one);
- The local authority in whose name a Care Order was in force before the Special Guardianship Order was made;
- Any person who is named in a Child Arrangements Order as a person with whom the child is to live;
- With the leave of the Court:
 - Any parent or guardian of the child;
 - Any step-parent who has parental responsibility;
 - Anyone who had (but no longer has) parental responsibility immediately before the Special Guardianship Order was made;
 - The child (if the Court is satisfied that the child has sufficient understanding to make the proposed application).

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.

9 Special Guardianship Support Services

The local authority must make arrangements for the provision for a range of support services in their area to meet the needs of people affected by Special Guardianship.

Special Guardianship support services are defined as:

- Financial support (see Section 14, Financial Support), see appendix 1, 5 and 6.
- Services to enable groups of children for whom a Special Guardianship Order is in force (or in respect of whom such an Order is being formally considered), special guardians, prospective special guardians and parents of the child to discuss matters relating to special guardianship;
- 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;
- Therapeutic services for the child;
- Assistance for the purpose of ensuring the continuance of the relationship between the child and his/her 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; and
- Counselling, advice and information.

Where the support provided includes respite care requiring the provision of accommodation, the child must be Looked After for the duration of the period of respite care to ensure that appropriate safeguards are in place.

Special Guardianship Support will be subject to the approval of the Team Manager (Special Guardianship Support).

The provision of any services (other than counselling, advice and information) may include cash assistance (for example cash to pay a babysitter to facilitate a break etc). When cash is provided in this way it should not be means tested as it is being given as part of a service rather than as financial support.

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

Where the child was previously Looked After, responsibility for 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 after the making of a Special Guardianship Order. Thereafter the local authority where the Special Guardian lives will be responsible for assessing and providing support services.

If a child is not Looked After, the local authority where the Special Guardian lives has the responsibility for assessing and providing support services. This includes assessment and any support that is needed by the child's relatives who may live elsewhere. If the special guardian and his/her 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 (i.e. that paid on a regular basis), which was agreed before the Special Guardianship Order was made, remains the responsibility of the local authority that agreed it so long as the family qualify for payments.

Local authorities may also 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 move to allow time for the new authority to review the family's existing plan without a break in service provision.

In addition to the support provided by local authorities, the Adoption Support Fund in England also covers 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.

All requests for additional finances must be made through the Permanency Panel and be requested through a Permanence Panel Report (see appendix 2). These reports can be obtained the Permanency Panel Co-ordinator and must be submitted by Thursday, in preparation for the Panel on the Monday of the following week.

10 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.

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. The person who requested the assessment must be allowed at least 28 days to make representations in relation to the decision.

It will not always be necessary to undertake an assessment before providing information, advice, support or counselling services. However, if the local authority is considering providing therapeutic support services, then a full Child and Family assessment of need must be carried out.

11 Assessment of Need 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 that have shaped the life of the child;
- What the life of the child might be like with the proposed Special Guardian;
- Any previous assessments undertaken in respect of the child, the Special Guardian or the prospective Special Guardian;
- The needs of the Special Guardian or prospective Special Guardian and their family;
- The likely impact of the Special Guardianship Order on any pre-existing relationship between the child, parent and Special Guardian.

Assessments for special guardianship support services should follow the guidance set out in, and use the domains of, the Assessment Framework, recognising that the context is different from that for birth families. This takes into account the child's developmental needs, the parenting capacity of the Special Guardian and consideration of the family and environmental factors that together help to explain the child's life so far and what life might be like with the new family.

Consultation with the relevant Clinical Commissioning Group and Local Education Authority should form part of the assessment process, and the person whose needs are being assessed should be interviewed unless the assessment relates only to information and advice or unless it is not appropriate to interview a child. In this case the child's actual or prospective Special Guardian may be interviewed.

The assessment process should be flexible and should not delay provision of appropriate services.

After the assessment has been undertaken the local authority is required to prepare a written report of the assessment.

Special Guardianship Support will be subject to the approval of the Team Manager (Special Guardianship Support).

At the end of the assessment and once the necessary approval has been obtained, the social worker must inform the person requesting provision of its outcome, 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 proposes to provide to help meet the child's needs;
- If financial support is to be paid, the amount and conditions attached.
- The start and end date of any financial support.
- All assessments and letters must be placed onto the children's Liquid Logic file.

12 The Special Guardianship Support Plan

Where an assessment identifies the need for ongoing support services, a Special Guardianship Support Plan must be completed, see appendix 6.

From 1 September 2021, the School Admissions Code provides that children being raised by family and friends' carers under a Special Guardianship Order or Child Arrangements Order, who struggle to get a school place during the year, will be supported in finding one.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989176/School_admission_code_2021_slip.pdf)

Other agencies, such as Education and Health, may need to be consulted about the contents of the Plan.

The Plan should be written in such a way that everyone affected can understand and set out:

- The services to be provided;
- The objectives and criteria for success;
- Timescales for provision;
- Procedures for review;
- A named person to monitor the provision of services in accordance with the Plan.

- The SGSP should set out the contact arrangements between the child and the parent(s) and should include (i) the type of contact which is to take place, (ii) the frequency and duration of contact, (iii) who is to be responsible for making the arrangements of contact, (iv) what practical arrangements need to be provided for in order to facilitate contact and (v) what professional support and assistance, if any, will be provided to the prospective Special Guardian.

Special Guardianship Support will be subject to the approval of the Permanency Panel before being passed to the Post Adoption and SGO Support Service for monitoring. This does not relate to post order assessments and support plans where the Post Adoption and SGO Support Service are already involved.

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.

Where representations are received, they should be referred to the Team Manager (Special Guardianship Support) to decide whether to amend or confirm the Plan. The allocated social worker must then write to the person concerned setting out the final plan. A final notice of the authority's decision must then be given to include the following:

- Details of the plan and the name of the person nominated to monitor the provision of services;
- Where financial support is to be provided:
 - i. The method of determination of the amount of financial support;
 - ii. The amount, frequency, start date and period of any payment in instalments;
 - iii. When any single payment is to be made;
 - iv. Details of any conditions and the date by which those conditions are to be met;
 - v. The arrangements and procedure for review, variation and termination of financial support;
 - vi. The responsibility of the authority in relation to reviews and of the Special Guardian in respect of any conditions.
 - vii. The Support Plan must be signed off by the chair of the permanency Panel if there are any changes to the financial elements of the plan.

13 Review of Special Guardianship Support Plans

Special Guardianship Support Plans, where specific support has been identified, (other than financial support payable periodically) must be reviewed:

- If there is any change of circumstances affecting the support;
- At such stage of the implementation of the plan as is considered most appropriate;
- In any event at least annually.

Where services are being reviewed the same procedure for assessment must be followed as in a first assessment.

If a local authority proposes to vary or terminate the provision of Special Guardianship support services to any person, before making any decision as a result of the review, it must give the person an opportunity to make representations and for that purpose it must give notice of the proposed decision and the time allowed for making representations. This notice must contain the same information as the notification of the outcome of a first assessment (see section 12, the Special Guardianship Support Plan) including a draft of the revised plan.

Any change to the Special Guardianship Support Plan will be subject to the approval of the Team Manager (Special Guardianship Support). Any additional approval required for changes to financial support must be made through the Permanency Panel using the Panel report template (appendix 2) and if agreed by Panel, the RO2 form for signing and placing on the children's Liquid Logic file, see appendix 7.

If the local authority decides to vary or terminate the provision of support after the review, notice in writing must be given.

The format and content of the review will vary depending on the circumstances of the case. Notification of changes of circumstances and any review of the provision of support services need not always necessitate direct contact between the local authority and the Special Guardian. Where the change of circumstances is relatively minor the review might be limited to an exchange of correspondence. In particular, the annual review of financial support might be achieved by exchange of correspondence between the local authority and the Special Guardian. Where the change of circumstances is relevant only to one service the review may be carried out with reference only to that service. However, where the change of circumstances is substantial, for example, a serious change in the behaviour of the child, it will normally be appropriate to conduct a new assessment of needs.

14 Financial Support

14.1 The local authority must take account of any other grant, benefit, allowance or resource available to the person in respect of his needs as a result of becoming a Special Guardian of a child. Financial support cannot duplicate any other payment available to the Special Guardian. If the Special Guardian was previously a foster carer, they will continue to receive the same skills level fostering allowance as they received prior to becoming a Special Guardian.

Special Guardians must be helped to access any benefits to which they are entitled; this will usually include child benefit and tax credits. Further information and advice can be obtained from Carers Payments Department within the Finance Service.

The Special Guardian's means will normally be considered when ongoing financial support is being considered. They should therefore be asked to complete a Financial Assessment Form, which, when completed, should be passed to the Finance Officer responsible for carrying out means assessments.

Once the means assessment has been carried out, the Finance Officer in Carers Payments should send written notification of the outcome to the relevant social worker for presentation and potential agreement at the Permanency Panel.

The social worker should then write to the Special Guardian setting out the amount of financial support agreed by the Panel and information in relation to the following:

- Whether financial support is to be paid in regular instalments and if so, the frequency of payment;
- The amount of financial support;
- The period for which the financial support is to be paid;
- When payment will commence and cease;
- 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 Carers Payments and also placed on the child's Liquid Logic file.

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 care 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 considering an element of remuneration in financial support payments to ex-foster carers.

Where the Special Guardians were previously the child's foster carers, the local authority will maintain the fostering allowance until the child reaches the age of 18 years.

The only circumstance 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 or an application is made to vary or discharge a Special Guardianship Order in respect of that child.

Local authorities are not expected to meet the legal costs of a Special Guardianship Order where they oppose an application in respect of a child they previously looked after or in a non-looked after case. Local authorities may wish to advise prospective Special Guardians in these circumstances that they may be able to obtain help with legal costs from the Legal Aid Agency.

14.2 Review of Financial Support Paid Periodically

Where financial support is paid periodically the local authority must review this:

- On receipt of the annual statement received from the Special Guardian;
- If there is any relevant change of circumstances that the Special Guardian agreed to notify, or any breach of a condition comes to the local authority's notice;
- At any (other) stage in the implementation of the plan that the local authority considers appropriate.

The procedure for assessment set out for first assessment for financial support (see above) applies equally to a review of financial support. If the local authority proposes, as a result of the review, to reduce or terminate financial support or revise the plan, before making that decision the local authority must give the person an opportunity to make representations.

For that purpose it must give the person notice of the proposed decision and the time allowed for making representations, but the local authority may suspend financial support pending that decision if they think it appropriate. All appeals will be heard at Permanency Panel and the decisions made by Panel clearly outlined in a letter to the person appealing.

The notice must contain the same information as the notification of the outcome of the first assessment.

The local authority must, having regard to the review, and after considering any representations received within the period specified in the notice, then decide whether to vary or terminate payment of the financial support or whether to seek to recover all or part of any financial support that has been paid; and where appropriate, revise the plan.

Where Special Guardians are in receipt of financial support, Carers Payments 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.

The Assessment Form should be forwarded to the Finance Officer for consideration, see appendix 5. If any change in financial support is considered appropriate, the recommended change should be forwarded to the Permanency Panel for a decision.

Where Special Guardians do not return the Assessment Review Forms within the required time scale, the social 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.

14.2 Where an overpayment of a Special Guardianship Order allowance occurs, either as a result of a change in the allowance amount, or the termination of an allowance, the overpayment will be recovered as follows:

1. A deduction will be made from future payments via the fortnightly Carers payroll. An instalment plan will be sent out to the Special Guardian to inform them of the overpayment amount and detail any future deductions.
2. Where the above is not possible, an invoice will be raised, and repayment arranged via the Sundry Debtors team.

15 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 retrospective approval of the Permanency Panel will still be required. The local authority will need to review the provision as soon as possible after the support has been provided in accordance with the procedures set out above.

15.1 Special Guardianship Orders in International Cases

Identifying potential long-term carers for the child within the family may include those who are either resident in, or nationals in, overseas countries. Special guardianship can be considered in placing a child outside of the jurisdiction. Consideration must be given to how assessments are carried out in a legally compliant and culturally relevant manner.

Thought should be given to:

- The status of special guardianship in that country and other legal matters;
- The relevant matters associated with the care of children in that country: permanent, stable and secure family life; safeguarding; education and health; and specifically how all of these relate to the personal living circumstances of the host family and their need for support services, including financial and therapeutic support and contact between family members including those resident in the UK.
- Contacting local agencies in that country for guidance on the support that maybe offered.

In advance of the child being placed, a plan will need to be agreed about how the placement will be supported and what the contingency arrangements are for the child.

Note:

- i. contracting states to the 1996 Hague Convention will be better placed to offer co-operation and support than some other countries,
<https://www.hcch.net/en/states/hcch-members>
- ii. social workers should carefully explore the local authority's ability to provide financial support particularly after an initial 3 years. when 'out-of-area placements' are abroad.

See also Children and Families Across Borders (CFAB) (*cfab.org.uk*)

16. Special Guardian Duty on the Death of the Child

If the child with respect to whom a Special Guardianship Order is in force dies, the Special Guardian must take reasonable steps to give notice of that fact to:

- Each parent of the child with parental responsibility; and
- Each guardian of the child.

17 Financial Forms

All financial requests agreed by the Permanency Panel should be written on to an RO2 form, see appendix 7, obtained by the Permanency Panel Co-ordinator and signed off by the Permanency Panel Chair. Following this, all forms must be placed on the child's Liquid Logic file under 'Documents'.

18 Letters of confirmation, filing of documents

Once the Special Guardianship Order has been granted, the allocated social worker must write to the Special Guardian to outline the financial agreement start and end date of the agreement. This should be completed within two weeks of the Order being granted. The letter should be placed on to the child's Liquid Logic file under 'Documents'.

All documents relating to the eventual award of the Special Guardianship Order, including assessments, Court Reports, Financial Assessment forms, RO2 forms and Panel reports must be placed on to the relevant child's or children's file under 'Documents'.

19 Leaving Care arrangements

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 Leaving Care Act, 1989.

To be a 'Qualifying' Care Leaver, Section 24(1A) of the 1989 Act provides that the child must:

- have reached the age of 16, but not the age of 21;
- if less than 18 years old, have a Special Guardianship Order in force;
- if 18 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.

Legal Documents

- Children (Leaving Care) Act 2000
- Children and Young Persons Act 2008
- Care Standards Act 2000
- Care Leavers Regulations 2010
- The Children Act 1989 Guidance and Regulations - Volume 3: Planning Transition to Adulthood for Care Leavers

Practice Guidance

Local authorities may give advice, guidance and assistance to certain groups of young people who "qualify" for leaving care support. Some "qualifying children" will be as vulnerable and have very similar needs to eligible, relevant or former relevant children.

Where a qualifying child has been previously looked after, the local authority must assess their needs to establish whether they require advice and assistance. Where, following a Child and Family Assessment, the authority concludes that support will be necessary over a period of time, they should draw up a plan with the young person outlining the support that will be provided. In order to determine the extent of the support required, a Pathway Plan will be developed. This Plan will follow the same format as the Pathway Plan for a relevant or former relevant child. The plan will outline the support to be provided to the young person, including, if necessary, any financial support. The plan should be drawn up by a social worker or suitably qualified person.

Special Guardianship

The relevant local authority should make arrangements for young people who meet these criteria to receive advice and assistance in the same way as for any other young person who qualifies for advice and assistance under the 1989 Act. Regulation 22 of the Special Guardianship Regulations 2005 provides that the relevant local authority is the one that last looked after the child.

Local authorities should also set out what assistance can be provided to young people who are deemed 'Qualifying' as a result of being looked after immediately prior to becoming subject to a Special Guardianship Order or subject to a private fostering arrangement. Local authorities will need to be clear about which local authority is responsible for the provision of services to qualifying young people.

Young people who return home and young people living at home

A young person's status as a care leaver can also change if they leave care and return home to live with their birth family. A 16 or 17 year old who has lived for a continuous period of six months with a parent or someone with parental responsibility will not be a relevant child. However, if this arrangement breaks down before they turn 18 and the young person ceases to live with the person concerned they would again become relevant child.

Where, following a statutory review, young people who are 'accommodated' under section 20 of the 1989 Act by arrangement with their parents return home in a planned manner, they will cease to be looked after and be 'relevant' children. On returning home the young person's parent/s are able to claim child benefit as long as the young person is undertaking full time education and training. After six months, and following a review that these arrangements are successful, the young person will become a qualifying child.

Local authorities should set out how they propose to financially support young people in these circumstances, taking into account the financial circumstances of their parent/s. Local authorities will need to consider equity issues in relation to siblings who may not have been looked after. For example, it may not be appropriate to provide the full range of transition to adulthood allowances such as birthday and Christmas/festival allowances if this creates disparities between other siblings who have not been looked after and therefore undermines parent's financial circumstances and independence.

Financial assistance for qualifying young people

For care leavers who do not become relevant children but who qualify for advice and assistance under section 24(2), the primary financial support role remains with the Department for Work and Pensions. However, local authorities may also give financial assistance to these young people on account of their particular needs over and above those of other young people and, where appropriate, may provide assistance to the same level of that provided to an eligible, relevant or former relevant child.

This assistance may be in kind or, in exceptional circumstances, in cash. It should, however, be borne in mind that the local authority's power to provide assistance to these care leavers extends until they reach the age of 21, or 25 where the young person is engaged in education or training. Where a young person has no parent to turn to for help, or where the parent does not have the capacity to provide assistance, it is to be expected that they will turn to the local authority for help. In these circumstances and following an assessment of need the local authority may provide support to the same level as that provided to other care leavers.

Local authorities are encouraged to be pro-active in advising young people of the circumstances in which assistance can be provided and to take into account the fact that the reference to the provision of financial assistance in "exceptional circumstances" refers to the individual young person rather than to the general policy of the authority. It will be for the authority to decide in each case whether the provision of financial assistance would be appropriate, but the presumption should be that such assistance should be provided where this is necessary to protect the young person's welfare and it cannot be made available by any other agency. Local authorities are encouraged to be flexible in deciding what leaving care assistance can be given for and to consider a young person's wishes about the way in which any assistance should be spent.

Disabled young people who have been provided with short term breaks may be particularly in need of financial assistance, especially if they have high communications needs that make it difficult for them to apply to other agencies, such as voluntary organisations, for help.

Qualifying Young People in Education Employment and Training

Local authorities have a specific power to provide assistance to these care leavers where this is connected with the young person's employment, education, or training, this can be up to the age of 24 and may include issues around accommodation.

Vacation accommodation

The local authority must ensure that any care leaver in full time residential further education or higher education, regardless of whether they are a former relevant child or qualifying child, has suitable accommodation if they need it during a vacation. The local authority must be satisfied that the young person needs accommodation because their term-time accommodation is not available. This assistance may take the form of either providing the young person with suitable accommodation, or by paying them enough to secure suitable accommodation themselves.

Which Authority is responsible?

In the case of a young person formerly looked after by a local authority, the relevant authority is the one which last looked after him/her. In the case of someone qualifying for advice and assistance under any of the other provisions, the relevant authority is the authority in whose area the person has asked for help.

Appendices – separate documents

1. Financial Assessment Guidance Notes

2. Blank Permanency Panel Report

3. Full Connected or SGO Assessment Template

4. RO & SGO Financial Assessment Form

5. Support Plan SGO

6. RO2 Form

7. Good practice guidance: Getting it Right First Time

The following suggested good practice is taken from the **Local Government and Social Care Ombudsman report Firm Foundations: Complaints about Council Support and Advice for Special Guardians** (May 2018).

The following is not an exhaustive list but sets out some of the positive steps councils can take:

- Give early, clear and unambiguous advice to people who are considering becoming special guardians. Consider how this can:
 - Explain what is special guardianship and what this means for parental responsibility, legal security and stability;
 - Explain the council's role and that of the court;
 - Set out who can apply to be a special guardian and what alternatives could be more suitable;
 - Make the process of applying to be a special guardian clear, including the role of the council in writing a report to court;
 - Explain the assessment process before becoming a special guardian. Explain that applicants may need to complete some training.
- Be as clear as possible about the support that might be available and how the council will assess the applicant's support needs;
- Be as unambiguous as possible about the fixed term duration of support and what it is likely to be used for;
- Back up verbal advice and guidance in writing wherever possible, particularly where this may have long term consequences;
- Manage expectations early on, for example where special guardians expect ongoing support or help with major personal expenditure;
- Be as clear as possible with applicants that any support may be time limited;
- Develop advice for social workers involved in supporting potential and actual special guardians. This could include:
 - A flow chart showing responsibilities at key stages such as suitability assessment, financial assessment, permanence panel and court;

- A checklist of things to cover at first assessment visit (for example explaining the process and financial situation);
- A summary of the SGO assessment process including child information (for example attachment issues and any early neglect or trauma), carers information (for example current relationship and stability).
- Keep clear and transparent records of contact with special guardians. This is always important, particularly where guardians will probably be supported by several different social workers and other officers over several years;
- Write support plans that are clear, in plain English and set actions that are as specific, measurable and achievable as possible so the council and guardian can review progress;
- Make sure support plans:
 - Are shared, discussed and agreed with special guardians, and this is well documented;
 - Are written so that they are easy to evaluate and keep under review. It should be easy for the council and guardian to decide whether all the support has been provided;
 - Are regularly reviewed and kept up to date. Make sure plans continue to meet the child's needs as they change;
 - Set out the approach to calculating special guardianship allowance. Explain this at the earliest stage as possible, making clear this will be reviewed and depend on evidence of continuing needs;
 - Keep the best interests of the child at the forefront of decision making.