

Not Protectively Marked



Internal Ref:	NELC.02.01.02.36
Review date	June 2022
Version No.	V3.0

Children Social Care

Special Guardianship Policy and Guidance

Not Protectively Marked

- [Background](#)
- [Policy](#)
- [Legal Provisions](#)
 - [Parental Responsibility](#)
 - [Consequences for birth parents](#)
 - [Age considerations](#)
 - [Contact](#)
- [Statutory requirements governing applications](#)
- [Local guidance and procedure](#)
- [Legal requirements for providing support services](#)
- [References](#)

Not Protectively Marked

1. Background

Special Guardianship is a legal status and an order, introduced by the Adoption and Children Act 2002 (which inserts section 14A into the Children Act 1989). This has become a significant tool when children cannot be cared for by birth parents to ensure children are cared for by adults who can lawfully exercise parental responsibility in respect of them. These Special Guardians are typically, but not solely, other family members. SGOs were introduced to ensure that children have the experience of a permanent family life, which is fundamental to their safety, welfare and development.

Special Guardianship Orders offer greater security than long-term fostering but do not require the absolute legal severance from the birth family that follows from an Adoption Order.

A Special Guardianship Order gives the special guardian parental responsibility for the subject child(ren). Unlike adoption, under a Special Guardianship Order the birth parents remain the child's legal parents and retain parental responsibility, although their ability to exercise this is limited. The Special Guardian(s) will have clear responsibility for all day-to-day decisions about caring for the child or young person and for taking any fundamental decisions about their upbringing, for example, their education. A Special Guardian may exercise parental responsibility to the exclusion of others with parental responsibility, including parents and without needing to consult them in all but a few circumstances.

Prospective carers from minority ethnic groups may also wish to offer a child a permanent family but have religious and cultural difficulties with adoption as it is set out in law. Unaccompanied asylum-seeking children also need secure, permanent homes, but may have strong attachments to their families abroad. Special Guardianship may assist children in these circumstances.

One major purpose of special guardianship is to meet the child's need for a legally secure relationship with their carer. Where a Special Guardianship Order is made at the conclusion of Children Act proceedings when a Care Order or Interim Care Order ends, the child will no longer be looked after by a Local Authority.

2. General Policy

The route to a Special Guardianship Order could arise in one of two ways:

1. Where prospective Special Guardians make an application for an SGO directly to Court and;
2. Where the court makes an SGO of its own motion, within public or private law proceedings.

Any notification to North East Lincolnshire from eligible carers wishing to apply for a Special Guardianship Order must be viewed in the light of the welfare checklist in section 1(3) Children Act 1989. The child's welfare shall be the court's paramount consideration (section 1(1) CA 1989). The views and wishes of the child, the views and wishes of the carers and their suitability, including whether they fully understand their roles as special guardians must always be fully considered. Every effort must be made to fully involve the child and the prospective applicants in the process. Where a child will cease to be looked after following the order being made, it must be clear that the applicants fully understand how they will take responsibility for the child's upbringing without the involvement of the Local Authority.

An application for a Special Guardianship Order is a permanency option for the child. All decisions to support in principle the application to court for a Special Guardianship Order in relation to a looked after child, or any other child not looked after, but for whom a maintenance allowance will be sought from the Local Authority must be endorsed by the relevant Head of Service. The decision to support or otherwise the application in principle will always be given to the applicants in writing by the Social Work Team.

3. Legal Provisions

3.1 Parental Responsibility

3.1.1 Special Guardianship

The special guardian will have clear responsibility for the day-to-day decisions about caring for the child or young person, and his or her upbringing. In all cases where a Special Guardianship Order is made, the applicant(s) acquire(s) parental responsibility (PR).

A child previously looked after, will cease to be looked after on the making of this order. A special guardian may exercise PR to the exclusion of all others with PR, apart from another special guardian. A special guardian can also appoint a guardian in the event of their death.

There are some limitations to the exercise of PR by special guardians. Special guardians cannot agree to change a child's name or live abroad for more than three months without the agreement of other people with parental responsibility or with leave (approval) of the court. Special guardians also cannot consent to the adoption of the child.

3.1.2 Child Arrangements

When a Child Arrangements Order is made setting out that a child is to live with somebody who is not a birth parent, parental responsibility is extended to the holder(s) of the order. The holder of a Child Arrangements Order exercises parental responsibility jointly with other people who have PR, for example with the birth parent(s), although the child's living and contact arrangements are usually set out within the Order.

3.1.3 Adoption

Where an Adoption Order is made, PR is given exclusively to the adopters. The child is treated in law as if he or she had been born to the adopters, and the adopters become responsible for maintaining the child.

3.2 Consequences for Birth Parents

3.2.1 Special Guardianship

Under a Special Guardianship Order, the child's birth parents retain parental responsibility. Their ability to exercise this will, however, be very limited because the special guardian will have enhanced parental responsibility which they can exercise to the exclusion of the parental responsibility held by the parents. The special guardians will have to seek the consent of the parents if they wish to change the child's name or live abroad for more than three months, but they also have the option of applying to the court for permission if the parents do not consent. The parents also retain the right to decide on consent to adoption and may apply to court for contact with the child or for a variation of the Special Guardianship Order.

A Special Guardianship Order can only be discharged or varied upon application, with some applicants (including parents, 'others' with parental responsibility and the child) requiring leave of the court to permit the application to proceed. The court will consider before they grant leave, whether there has been a significant change in circumstances since the making of the Special Guardianship Order.

3.2.2 Child Arrangements

Under a Child Arrangements Order, the child's birth parent(s) retain parental responsibility and hold it jointly with anyone named in the Child Arrangement Order. The child's birth parent(s) can apply to court for contact with the child, for enforcement of the Child Arrangements Order or a variation of the Child Arrangements Order.

3.2.3 Adoption

Under an Adoption Order, the child's birth parent(s) lose all parental responsibility. The adoptive parents are treated in law as if the child had been born to them.

3.3 Age Considerations

3.3.1 Special Guardianship

Special Guardianship Orders last until the child is 18. This should provide a strong foundation for a lifelong relationship between the child and their Special Guardian so the child's needs at the time of making the order and in the future must be considered.

3.3.2 Child Arrangements

Under the Children Act 1989, the court may not make a Child Arrangements Order for a child aged 16 or over or one that will end *after* a child reaches the age of 16 unless exceptional circumstances apply. Although these exceptional circumstances are not outlined in law, case law deems this to be circumstances which deviate from the norm.

3.3.3 Adoption

Adoption Orders last throughout childhood into adulthood.

3.4 Contact

3.4.1 Special Guardianship

For a child who is subject to a Special Guardianship Order it is likely that there will be more face-to-face contact with their parent(s) than where a child has been adopted. Recommendations for the level of contact should be made by the Local Authority in the SGO Assessment and Support Plan.

3.4.2 Child Arrangements Order

In addition to naming who the child shall live with, a Child Arrangements Order can be used to express who the child shall spend time with or have indirect contact with for example, but this is not always necessary. Parents may well have regular and frequent contact with the child, irrespective of whether this is set out in a Child Arrangements Order.

3.4.3 Adoption Order

When an Adoption order is made, any Order under section 8 or 34 of the Children Act 1989 in respect of contact ceases to have effect and cannot be applied for. However, the Court may make an order under section 26 of the Children and Adoption Act 2002 setting out contact arrangements. It is more usual for arrangements for contact, whether direct or indirect, to be made with the help of the

agency before the Adoption Order is made.

4. Statutory Requirements Governing Applications

4.1 Eligibility

Before the Local Authority takes any steps to support an application for Special Guardianship they must first ensure that the person(s) wishing to become Special Guardian(s) are eligible. The individuals who are entitled to apply for a special guardianship order with respect to a child are—

- a) any guardian of the child;
- b) any individual who is named in a Child Arrangements Order as a person with whom the child is to live;
- c) any person with whom the child has lived for a period of at least three years;
- d) any person who has the consent of every person named in any Child Arrangements Order;
- e) any person who in any case where the child is in the care of a Local Authority, has the consent of that Authority or has the consent of each of those who have parental responsibility for the child;
- f) a Local Authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application;
- g) a relative with whom the child has lived for a period of at least one year immediately preceding the application.

4.2 Provisions Relating To Family Proceedings

It is important to note that the Court may make a Special Guardianship Order in any family proceedings concerning the welfare of the child, if they consider an order should be made. This applies even when no application has been made and includes Adoption proceedings. In all circumstances the Local Authority will need to provide a report for the Court. The Court and Local Authority must consider the whole range of options available.

4.3 Timescale

An applicant applying directly to the Court, must give the Local Authority three months' notice in writing of their intention to apply for a Special Guardianship Order.

Typically, the requirement for three months' notice in writing is waived by the LA where Care Proceedings are ongoing and the Local Authority is considering a Special Guardianship Order as part of their care planning options. Also, where there has been an application for an Adoption Order. The Court may then give leave for someone else to apply for an Order for Special Guardianship, although this will occur in very exceptional circumstances. In these cases, the 3 month notice period is disregarded to stop the competing Special Guardianship Order delaying the Adoption Order. The Court will then consider both at the same time and decide what the best option for the child is.

4.4 Reports To The Court

Upon written notice being received, the Local Authority must prepare a report as required in s 14A (8), namely:

- i. the suitability of the applicant to be a SG;
- ii. such matters (if any) as may be prescribed by the Secretary of State; and,
- iii. any other matter which the local authority considers to be relevant.

The requirements of the Secretary of State are found in the schedule to the Special Guardianship Regulations 2005

<https://www.legislation.gov.uk/ukxi/2005/1109/schedule/made>

A Special Guardianship Order must be underpinned by robust evidence, along with a detailed Support Plan, which must comply with the amendments made to the regulations in 2016 including explicitly addressing any harm that the child may have suffered and the capacity of the prospective Special Guardian to enable the child's developmental recovery from that harm.

<https://www.legislation.gov.uk/ukxi/2016/111/made>

4.5 Variation of Special Guardianship Orders

The following people may apply to vary or discharge a Special Guardianship Order:

- h) the Special Guardian (or any of them, if there are more than one);
- i) any parent or guardian of the child concerned;
- j) any individual who is named in a Child Arrangements Order as a person with whom the child is to live;
- k) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;
- l) the child himself; or
- m) a Local Authority designated in a Care Order with respect to the child.

Some applicants (including the child, parents and step parents with PR) need leave of the Court to apply to vary or discharge a Special Guardianship Order.

The Court may only grant leave if there has been a significant change in circumstances since the Order was made. In the case of the child applying, the Court may only grant leave if it is satisfied that the child has sufficient understanding to make the proposed application.

5. Local Guidance and Procedure

5.1 Recommending a Special Guardianship Order: the Child's Interest

Decisions regarding the recommendation for Special Guardianship must be viewed in the light of the welfare checklist at section 1(3) of the Children Act 1989, and when determining any question with respect to the upbringing of the child under the provisions of Special Guardianship, the child's welfare shall be the court's paramount

Not Protectively Marked

consideration. It is expected that the option of Special Guardianship will be discussed at all statutory childcare reviews.

In determining whether a Special Guardianship Order is in the child's best interest, the following issues must always be considered:

- The views and wishes of the child, whether they fully understand the nature of a Special Guardianship Order and why this may be the preferred permanency option for them.
- The views, wishes of the carers and their suitability, including whether they fully understand their roles as special guardians. Where the child will cease to be looked after upon the order being made, how they view taking responsibility for making decisions about the child's upbringing without the involvement of the Local Authority.
- The suitability of plans for future contact between the child and their birth parents. It should be noted that in reporting to the Court, the Local Authority is required to recommend appropriate contact arrangements in all cases.

Any decision about recommending Special Guardianship must be discussed fully with the Service Manager supervising the social worker who reports to the court.

5.2 Looked After Children: Permanency Planning

North East Lincolnshire Children's Services approach to any notification of intention to apply for a Special Guardianship Order for any Looked After Child, will be determined by a Care Planning Meeting and should be ratified at a Looked After Child Review.

Every effort must be made to involve the prospective applicants and the child in the review and to consider fully with them the reasons for making an application and whether it is advisable to do so. The prospective applicants must be advised of the role of the local authority in reporting and making recommendations to the Court, including their duty to consider and report on what other options the Court may wish to consider. They should be notified of their right to seek independent legal advice.

An application for a Special Guardianship Order is a permanency option for the child and must be evaluated with the same thoroughness as any other permanency plan. The social worker completing the report for the Court will normally be the social worker for the child concerned. A permanency planning meeting should be held within five days before the LAC Review whereby notification of intention to apply is given. At this planning meeting the following will be discussed:

- Background history
- Legal context
- Outcome of any single or other assessments
- The overarching plan as agreed at the last statutory LAC Review
- Developments since the last statutory review
- The child's needs
- The child's wishes and feelings
- Wishes and feelings of the child's carers

Not Protectively Marked

- Parents wishes and feelings
- Wishes and feelings of significant others
- Views of the child's social worker and their supervisor

5.3 Children Who Are Not Looked After

Where the child is not Looked After, the Local Authority has the same responsibility for reporting to the Court and carefully assessing the recommendations. As for a Looked After Child, every effort will be made to consider fully with the prospective applicants and the child the reasons for making an application, whether it is advisable to do so, and what the other options might be. The prospective applicants must be advised of the role of the Local Authority in reporting and making recommendations to the Court, including their duty to consider and report on what other options the Court may wish to consider.

The allocation of the case will need to take into account the circumstances of the case, whether there is a social worker already involved, and the expectation of the statutory guidance that the social worker should be suitably qualified and experienced. Where this can not be achieved, social workers who do not have suitable experience will be supervised by someone who has.

6. Legal Requirements for Providing Support Services

6.1 General

Where it is intended that a Looked After Child will become subject to a Special Guardianship Order, those who must receive an assessment for Special Guardianship support services at their request include:

- The child
- The special guardian or prospective special guardian
- The child's parent

See also [Family and Friends Care \(proceduresonline.com\)](http://proceduresonline.com)

6.2 Comparisons With Adoption and Child Arrangements Orders

6.2.1 Child Arrangements Order

A Child Arrangement Order gives the person named in the Order parental responsibility for a child under 16 years (or 18 years if the child has disabilities) and parental responsibility / decision making is then shared between the person holding the Order and the birth parents.

The following are able to apply to the court for a Child Arrangement Order relating to a specific child or children, under Section 8 of the Children Act 1989:

- a parent;
- a guardian;
- a step-parent;
- any other person who has obtained the consent of all those with parental responsibility;

Not Protectively Marked

- any person who, if the child is in care, has the consent of the Local Authority;
- any person who has obtained the permission of those who already have a Child Arrangement Order for the child;
- anyone who the child has lived with for at least 3 years;
- a Local Authority foster parent if the child has lived with them for at least 1 year immediately preceding the application to Court;
- the child themselves if of an age and understanding; or any other person who has a genuine interest in the child's welfare.

In some cases, the Local Authority will not have had any involvement with the child or the family or may have only had some low-level involvement in offering advice and information.

The Local Authority may become involved at the request of the Court under Section 7 of the Children Act; to make an assessment and make recommendations for arrangements for the child or children.

The Local Authority cannot apply for a Child Arrangement Order nor can they apply on someone else's behalf however; a Child Arrangement Order is one of a range of private law Orders that a Court can make, even during public law care proceedings.

For a child who is looked after by the Local Authority under a Care Order, the Care Order is ceased when a Child Arrangement order is granted.

When a Child Arrangements Order is made to live with a named person who is not a birth parent, the named person in the Child Arrangement Order shares parental responsibility with the parent/s, the Local Authority does not share parental responsibility.

Alongside Child Arrangements Orders, the Court can make Supervision Orders and Family Assistance Orders, which are time limited Orders allowing the Local Authority to advice, befriend and assist those with whom the child live and who have Parental Responsibility. These can be for up to a year but can be extended for up to three years.

Financially, when a Child Arrangements Order is in place, the parent is responsible for financial support arrangements. The holder of the Child Arrangement Order will be entitled to claim child benefit and the child will count as a member of the household for any due Universal Credit and Council Tax reduction. The holder of the Child Arrangement Order will need to seek advice from Citizen's Advice or from the support services recommended on the Government benefits advice webpage, in respect of benefit entitlements in their own particular circumstances.

Under the Children Act 1989, Local Authorities have a discretionary power to make payments towards the cost of maintenance and accommodation of a child who is subject of a Child Arrangement Order. This is known as a Child Arrangements Order Allowance, and whilst there is no legal duty to pay this, there is range for this to be agreed at the discretion of the Local Authority (NEL Kinship Care Policy). Where agreed, this is a means tested financial support subject to regular review and must be agreed at Assistant Director level.

When a Child Arrangements order is in place, the Local Authority does not have any

Not Protectively Marked

care or decision-making responsibilities in respect of the child, nor is there any duty to oversee the arrangements. The Local Authority can still offer advice, guidance and support and a person holding a Child Arrangements Order can apply for support via universal services such as school, health professionals, through the children's centre hubs (TAC/Early Help/CAF).

A person holding a Child Arrangements Order can also request support and guidance through Section 17 Child In Need and any request will be considered by the Local Authority, as to whether the family require the support of a Social Worker. The Local Authority will not make welfare visits or carry out reviews in respect of the child unless a Supervision Order or a Family Assistance Order is in force, or if the child has been assessed as a child in need and a child in need plan has been formulated.

If a child is assessed or under assessment by a Social Worker as a 'Child in Need' the Local Authority may provide financial assistance in terms of goods or service, and in exceptional cases cash, to address identified needs to safeguard and promote a child's welfare under Section 17 (6) of the children act 1989.

Child Arrangements policy – [child-arrangements-orders-policy-final-draft.pdf](https://proceduresonline.com/child-arrangements-orders-policy-final-draft.pdf)
(proceduresonline.com)

6.2.2 Adoption Order

The Local Authority is required to make arrangements for the provision of adoption support services. All those affected by an Adoption Order are eligible for adoption support services.

6.3 Purpose

The purpose of Special Guardianship support services is to ensure the continuance of this relationship and arrangement between the child and his Special Guardian or the prospective Special Guardian.

The child's parents are likely to remain involved where a Special Guardianship Order has been made, so it will be important to assess the likely impact of the Special Guardianship Order on the relationship between the parent, the child and the Special Guardian. It is important to emphasise that Special Guardianship support should not be seen in isolation from mainstream services. North East Lincolnshire Children and Family Services will aim to ensure that the provision of services is agreed through the most appropriate route for example Child in Need, Early Help etc.

6.4 Leaving Care Support

A child who was 'Looked After' immediately before the making of a Special Guardianship Order, and who was then between the ages of 16 – 21, is eligible for leaving care support services. Other children who are under the age of 16 at the time the Order is made are not eligible.

6.5 Financial Support

In making a private application directly to the Court for an SGO, the regulations state that financial support should be provided where this is necessary to ensure that the

Not Protectively Marked

arrangements for a Special Guardianship Order placement can be secured (see NEL Kinship Care Policy).

Eligibility for the payment of regular allowances to Special Guardians is normally determined by a financial means assessment.

Assistance may also be provided with legal costs, both at the time of the application and subsequently. Assistance may be given where this is deemed necessary for the Order to be made or to continue, where the application or the continuation of the Order is assessed by the Local Authority as being in the child's best interests. Cases will be assessed individually and agreement to payment must be approved by the Head of Service Resources.

6.6 Looked After Children post SGO support plan

For Looked After children, the Local Authority who last looked after them retains responsibility for the assessment and provision of Special Guardianship support services for **three years** from the date of the making of the order. Where the initial three-year period has expired, responsibility for assessing and providing support services lies with the Local Authority where the Special Guardian lives.

Special Guardianship Order allowance is provided for **2 years** after the Order being made; at the same rate the carer was paid fostering allowance at the time of the Order. The carer can make an application for child benefit and child tax credit, which will be deducted from the SGO allowance. The additional payment for birthday and Christmas will no longer be paid. After 2 years or coming towards the end of that 2-year period, the payment will be financial means assessed and a decision made based on the household income, as to whether the payment will continue for the next year. These reviews will take place yearly and the carers will need to provide details and evidence of financial circumstances. If these are not provided, payments will cease.

The 2 years 'no detriment' policy above is the same for Local Authority employed Foster Carers who are matched to the child long term and later have an SGO, as it is for family and network carers who have been paid as Foster Carers for specific children under Regulation 24.

If the assessment and Support Plan highlights clear evidence that a longer period of financial support is needed or additional provision to support the child is required, the case will be presented at the NELC 'Placement Panel' by the Social Worker, with clear costs outlined. For example, children who have been Looked After may in later years, require support for therapeutic work or require a specific social work intervention. These children will not go through the usual referral and assessment process, they will be referred straight into the Children in Care and Fostering Service staff, to be supported for the appropriate identified need and period.

Children with complex and additional needs may require equipment or adaptations and they may need to be included in the SGO support plan as an additional requirement over and above the SGO allowance. It is to be as specific as it can be to the Special Guardian carer, to the Child and to the Panel what is to be agreed for future needs.

The Support Plan cannot be presented into Court until the Assistant Director and/or

Not Protectively Marked

Placement Panel has agreed all cost implications for the Local Authority.

7. References

The Adoption and Children Act 2002

The Children Act 1989

Special Guardianship Regulations 2005

Special Guardianship (Amendment) Regulations 2016

Public Law Working Group SGO Best Practice Guidance 2020

[Family and Friends Care \(proceduresonline.com\)](http://proceduresonline.com)

Not Protectively Marked