
Appendix 1

Special Guardianship Policy

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1. Introduction.

Southend Borough Council will ensure that all children that are looked after have a plan drawn up for their permanence. Special Guardianship is one of several options for permanency that can be considered. The guiding principle that Southend apply is what is the best option needed for each of these children. Southend embraces the value of special guardianship in providing permanence for children and young people on the edge of care, and those receiving safeguarding interventions, who would otherwise enter care. It is important that children who are not (or were not) looked after are not unfairly disadvantaged.

Special Guardianship is a legal order made by the court that secures or allows a child or young person to live with someone permanently. This order gives parental responsibility to the Special Guardian and can exclude the parents' exercise of their parental responsibility.

A court may make a Special Guardianship Order in respect of the child on the application of:

- any guardian of the child
- a local authority foster carer with whom the child has lived for one year immediately preceding the application
- anyone who holds a [Child Arrangement Order](#) with respect to the child, or who has the consent of all those in whose favour the order is in force
- a relative with whom the child has lived for one year immediately preceding the application
- anyone with whom the child has lived with for at least three years

- where the child is in the care of the local authority, any person who has the consent of the local authority
- anyone who has the consent of all those with parental responsibility for the child
- any person, including the child, who has the leave of the court to apply.

2. Principles

This policy is based on the following principles.

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

Within the Policy we will set out our criteria and how we will assess prospective applicants for Special Guardianship. We will also include how we undertake the assessment of SGO support needs, and the support to Special Guardians and children subject to Special Guardianship Orders. This will detail how we calculate the provision of financial support for the purpose of the support plan to accompany the assessment.

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

A Care Order does not automatically revoke a Special Guardianship Order although the Special Guardian's exercise of parental responsibility will be restricted as the local authority will have primary responsibility for decision-making under the Care Order.

3. Assessment of prospective Special Guardians

The SGO assessment will be completed in line with Regulation 21 of the Special Guardianship Regulations 2005 (amended 2016) and the Schedule (Matters to be dealt with in report for the court). All applicants being considered or assessed for a SGO will be given advice by the SGO advisor for Southend Borough Council. They will be provided with information about the implications of a Special Guardianship Order, the assessment process and any support including financial that the applicants may be able to receive. The assessment should be a working partnership between Southend Borough Council and the SGO applicant. Information collected during the assessment should be in line with the legal requirements set out in the Schedule of the Special Guardianship Regulations 2005. The assessment will involve at least 6 visits from the assessing social worker to the applicant's household and will include individual and couple (if applicable) discussions.

There may also be interviews with significant others i.e., family or friends, particularly those that live or spend significant time within the applicant's household.

Throughout this process the applicant is entitled to seek legal advice if required.

As a requirement of the assessment, the local authority will carry out thorough safeguarding checks which include Disclosure and Barring Check (DBS), Probation, GP Medical reports, Local Authority records, Ofsted and 3 personal references. In addition, Southend Borough Council will take up references from current and previous employers and school references if the applicant has school-aged children. The local authority may take up additional safeguarding checks if deemed necessary.

4. Parental Responsibility

The Special Guardian by virtue of the Court made SGO will have Parental Responsibility for the child. The Special Guardian will have a clear and expected responsibility for the day-to-day decisions concerning the care of the child.

'The child's parents will continue to hold Parental Responsibility, but the Special Guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).' The parents will continue to retain their right to consent or not to the child's adoption or placement for adoption.

In addition, there are events or actions in a child's life which require the consent of everyone who holds Parental Responsibility, for example.

- Any change of name of the child
- When a child leaves the United Kingdom and remains abroad for longer than three months.
- The sterilisation of a child

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

5. The circumstances in which a Special Guardianship Order may be made

The Court may make a Special Guardianship Order in any family proceedings concerning the welfare of the child. This applies even where no application has been made and includes adoption proceedings.

Any person making an application for a Special Guardianship Order must give 3 months' written notice to their local authority of their intention to apply in relation to a Looked after Child, the notice will go to the local authority looking after the child. In all other cases, the notice will be sent to the local authority for the area where the applicant resides. The local authority then has 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.

The provision of financial support will be considered:

6. Local Authority responsibility to carry out assessment of need for support services.

At the request of the following persons an assessment of need for support services must be carried out:

- a child who is looked after or was looked after immediately before the making of the SGO,
- a special guardian or proposed special guardian of such a child,
- a parent of such a child.

[\[Regulation 11\(1\) SGO Regulations 2005 as amended\]](#)

When the local authority receives a written request for or on behalf of a child, a special guardian or prospective special guardian or a parent (where the child was not looked after immediately before the making of the SGO), a child of a special guardian whether or not the special guardianship child is looked after or not, any person whom the local authority considers to have a significant and ongoing relationship with a child (whether the child is looked after or not), the local authority may carry out an assessment.

[\[Regulation 11\(2\) SGO Regulations 2005 \(as amended\)\]](#)

If the local authority decides that it is not going to carry out an assessment where it has discretion then it must give the person requesting the assessment notice, in writing, of the proposed decision including the reasons for the decision and must allow at least 28 days for them to make representations in relation to that decision. If representations are received, then the Permanence Panel must reconsider the LA's decision. The outcome and reasons for the decision must be sent to the person requesting the assessment.

[\[Regulation 11\(3\) Special Guardianship Regulations 2005 \(as amended\)\]](#)

Where a child was not previously looked after, it is the local authority where the special guardian lives that is responsible for undertaking an assessment of need and provision of any special guardianship support services in response to that assessment. If the special guardian and the family move, then the responsibility passes to the new local authority.

Where the child was previously looked after by Southend Borough Council, the authority is responsible for the assessment and provision of support services, if assessed as being required, for three years from the date of the SGO, regardless of where the special guardian lives during those three years. Southend Borough Council can arrange for special guardianship support services to be provided by another body on its behalf if considered appropriate. After the three-year period, if the special guardian no longer resides in Southend, the responsibility to assess and provide support services is the duty of the local authority where the special guardian resides.

Children who were looked after immediately before the making of a SGO 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](#). The child/young person would qualify if they:

- have reached the age of 16 but not the age of 21,
- are under 18 and there is a SGO in force,
- are 18 and above and had a SGO in force when they reached 18 years

and immediately before the making of the SGO they were a looked after child.

7. Assessment of need for support services

The [Special Guardianship Regulations](#) provide the framework in which support services (including financial support) can be provided to special guardians. Southend Borough Council can provide advice and support to Special Guardians:

- parenting support for special guardians
- advice on issues about special guardianship
- consultation and mediation with other agencies and/or local support groups
- financial support for the child, to consider their specific needs and the special guardian's financial position

Should the local authority consider providing support, it must complete a support plan setting out:

- what services are needed to meet the needs of the child(ren)
- what the timescale is for providing those services
- how these services will be reviewed
- a named person or service area that will review the services in accordance with the support plan

Special guardians should be given up to 28 days to make representations in respect of the SGO Support Plan [[Regulation 15 SGO Regulations 2005 \(as amended\)](#)].

The support plan should include details as to the person's need for support services, the basis upon which the financial assessment was determined, whether the local authority propose to offer support services, the services (if any) that are proposed to be provided to the special guardian, if financial support is to be paid, the proposed amount that would be payable and any conditions attached to the payments.

If the child has not been looked after by Southend Borough Council, then the special guardian is not as a matter of course entitled to any support services. This will include financial support; however, the authority can consider support services when assessed and determined to be appropriate and needed. The special guardian can represent their support needs with the assessing social worker, and any decision to provide support services will be confirmed by the Permanency Panel on each case.

8. Financial Support

The general principle is that *'where a person is seeking to make a permanent and substantial commitment in caring for a child by means of a Special Guardianship Order, this commitment should include a willingness and ability to meet the costs associated with caring for a child in the long-term'*. The financial ability and means of any prospective special guardians to care for the child, as it is with prospective adopters, is an important part of the assessment of their suitability. When the Authority is made aware of any SGO application the financial support aspect should be discussed as early as is possible. This will set out to any prospective Guardian what they can and cannot expect and will avoid any confusion and will assist with an informed decision for the applicant Guardian. It should also consider:

- when it is necessary to enable a special guardian to care for a child

- when a child needs special care due to disability, emotional or behaviour difficulties or previous neglect or abuse
- to help towards the legal costs for applying for an SGO
- when it is necessary to contribute towards the cost of accommodating and maintaining a child

Southend Borough Council must also consider:

- any other grant, benefit, allowance, or resource which is available to the person in respect of their needs due to becoming a special guardian of the child
- any investment income, tax credit or benefit, which would be available should the child live with them
- the amount required by the special guardian or prospective special guardian in respect of the reasonable outgoings and commitments (eg, housing, transport, and daily living expenses) but not including outgoings in respect of the child, the financial needs that relate to the child (eg, diet or replacement bedding) or the resource of the child (eg, trust fund).

Where an assessment of need identifies a need for financial support a request is submitted to the Permanency Panel. Decisions concerning financial support will be made on a case-by-case basis. A financial means test will be undertaken, and the panel will set out the timeframe for any transitional financial support to be paid. There should be no assumption that financial support will continue after the transitional period. The special guardians can request an assessment of support needs, including financial support at any time through the duration of the SGO. Any further support or financial support will be based on the outcome of an assessment of need and an updated financial means tested assessment.

Southend Borough Council uses a standardised means test as devised by the Department for Education.

If, when completing a financial means assessment (including a review), it is identified that the special guardian has not declared additional income or savings the assessment will be revised, and the revised financial support plan will be used.

Failure to provide information that is required to undertake the financial assessment or review may result in the termination of financial support.

In exceptional circumstances the local authority can disregard the outcome of a means test when considering whether to provide financial support for legal costs including fees payable to the court.

The local authority has a responsibility to provide notice of the outcome of the assessment, if financial support is to be paid to the special guardian, the proposed amount that would be payable and any conditions attached to the payment. A SGO allowance is only paid once the case has been approved at the Court & Permanency Panel. A one-off contribution to the cost of specific settling-in equipment can also be considered by the Panel if a clear need is identified.

If, at the point when a SGO is granted, the special guardian was receiving either a connected persons/family and friends' allowance or a fostering allowance for the child, Southend Borough Council may match the rate of allowance not including birthday, holiday, and Christmas allowances (minus child benefit where the special guardian's income is not solely derived from state benefits), for two years from the date of the SGO. **See Appendix 1 for current rates**

Fostering allowance to be attached.

Consideration will be given to continuing to pay the fee (remuneration) element, for a limited period, up to 24 months, to support the transition from fostering to SGO, at the discretion of the Court & Permanency Panel.

During these two years if either the fostering allowance is matched and or the fostering fee is paid, no other financial means assessment will be completed. After two years, there is no assumption that financial support will continue. Special guardians can request an assessment of support needs including financial support, at any stage, but any further support will be based on the outcome of the assessment which must be considered by the Court & Permanency Panel. Any further financial support would be means tested.

9. Financial support for Foster carers

If a child has been in a stable fostering placement and that carer progresses with an SGO application then Southend Borough Council will match the fostering allowance only (minus child benefit, Christmas, and birthday allowances) until the child reaches adulthood. For Independent Fostering Agency carers Southend Borough Council would not pay more than the Southend Borough Council maximum rate for a child of that age. [Regulation 7, SGO Regulations 2005 \(as amended\)](#) provides that the financial support may include an element of remuneration but ONLY when the decision is made before the SGO is granted, and the Local Authority consider it necessary to facilitate the person to become a special guardian, in a case where:

- (a) The special guardian or prospective special guardian has been a local authority foster carer (including family, friends, and connected person) in respect to the child; AND

- (b) An element of the remuneration was included in the payments made by the local authority to that person in relation to the fostering of the child or young person.

Regulation 7(2) SGO Regulations 2005 (as amended) states that the element of remuneration (fee) ceases to be payable after the expiry of the period of 2 years from the making of the SGO unless the Local Authority considers its continuation to be necessary having regard to the exceptional needs of the child or any other exceptional circumstances. This only relates to the fee (remuneration) element not to the entire SGO allowance.

10. Adoption Support Fund (ASF) and Pupil Premium

Children who were looked after immediately prior to the making of the SGO are eligible for Pupil Premium and Adoption Support Fund funding.

The Pupil Premium is accessed in the education setting, through self-declaration of the SGO by the Special Guardian.

The Adoption Support Fund will fund therapeutic support for the child, up to the Fair Access Limit. Where the assessment of need for support services identifies that therapeutic services would be beneficial, an application will be made to the ASF on the behalf of the Special Guardian. In the case of a successful application, funding will be released to the Local Authority to commission the approved services.

11. Assistance with legal costs

Regulation 6 (2)(c) SGO Regulations 2005 (as amended) provides that the Local Authority, where it considers that it is appropriate, may contribute to any legal costs including court fees, of a special guardian or prospective special guardian, as may be, associated with:

- (i) The making of SGO, variation or discharge of the same,
- (ii) Application under S8 (Child Arrangements Order)
- (iii) An order for financial provision to be made for the child.

The local authority is not expected to meet the legal costs of a SGO where it does not support the application, whether they were previously looked after or not.

12. Cessation of financial support

Financial support ceases to be payable to a special guardian if:

- a) The child ceases to have a home with the Special Guardian.
- b) The child ends full time education or training and enters employment.
- c) The child qualifies for Income Support or Jobseeker's Allowance in their own right.
- d) The child reaches the age of 18 unless they continue in full-time education or training, when the allowance may continue until the end of the course or training, they are undertaking (subject to a further assessment of need and a financial means test)

[\[Regulation 9 SGO Regulations 2005 \(as amended\)\]](#)

13. Review of Support Plans (including financial support)

The SGO support plan including the financial support, will be reviewed annually, unless a change of circumstances requires an earlier review. Financial support will be reviewed by undertaking a financial means test unless the allowance has been agreed for a longer period. The special guardians are expected to provide evidence of the following:

- financial circumstances
- financial needs and resources of the child
- the special guardian's address and whether the child/young person still has a home and resides with them,

The local authority having regard to the review and after considering any representations received within the period specified on the notice, decide whether to vary or terminate payment of the financial support or whether to recover any part of the financial support that has been paid; and where appropriate, revise the plan. The local authority must then give the person notice of the decision including the reasons for it and, if applicable the revised plan ([Special Guardianship Guidance 2017 para 87 - 91](#)). Where the court makes a [Child Arrangement Order](#) within proceedings prior to the making of an SGO, and by doing so the carers would be financially disadvantaged (the fostering allowance would cease), Southend will wherever possible, start any agreed SGO support at that stage rather than waiting for the final SGO to be granted. If Southend Borough Council intends to vary or terminate the special guardianship support services to any person, it will provide the person with the outcome of the review and reasons for the proposed decision in writing. The special guardian will have an opportunity to make representations on the decision. In respect of an amendment to or termination of any financial support, Southend Borough Council can decide to suspend the financial support until the outcome of the representations if it considers appropriate and there is sufficient justification as set out above. The affected special guardian **MUST** make their Representations within 28 days to the Court & Permanency Panel. The outcome of the representations to the Panel will be notified in writing. If the SGO is not satisfied with the outcome of the Court & Permanency Panel they may complain through the statutory complaints procedure.

14. Urgent Cases

Where a person has an urgent need of a service, the assessment process should not delay provision and arrangements can be made for support to be provided as a matter of urgency in appropriate cases. The situation will then need to be reviewed as soon as possible after the support has been provided in accordance with the procedures set out above.

15. Relevant Legislation and Guidance

Adoption and Children Act 2002

Special Guardianship Regulations 2005

Special Guardianship (Amended) regulations 2016.

National Minimum Adoption Standards 2011

Special Guardianship Guidance updated April 2012.

Framework for the Assessment of Children in Need and their Families
2000