



St. Helens
Council

People's Services Department

Special Guardianship Policy

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1. Introduction

1.1 What is Special Guardianship:

Special Guardianship is an order that can be made by the Court that gives a child legal security in a family without giving them a new identity. Under a Special Guardianship order, links between the child and their birth family are maintained. However, Special Guardians have parental responsibility to make day-to-day decisions concerning the welfare of the child or children. If the child is a looked after child, the granting of the Special Guardianship order will replace any existing order if this is in respect of a Care Order being rescinded then St Helens Council will no longer hold parental responsibility.

Once a Special Guardianship order has been granted you will gain parental responsibility for the child and although this is shared with the child's parent/s, the Special Guardian can exercise this responsibility without seeking permission from the parents (in most circumstances).

1.2 Legal Context

Special Guardianship is a legal status introduced as part of the implementation of the Adoption and Children Act 2002 on 30th December 2005.

The Prime Minister's Review of Adoption identified the need for an alternative legal status for children that offered greater security than long term fostering but without the absolute legal severance from the birth family that stems from adoption.

Special Guardianship is appropriate for:

- Older children who do not wish to be legally separated from their birth family but who would benefit from greater legal security and permanence;
- Children in long term foster care or those who are cared for on a permanent basis by members of their wider family;
- Children and carers who have cultural and religious difficulties with adoption as set out in law.

A Special Guardianship Order gives the Special Guardian Parental Responsibility for the child. Unlike adoption, under a Special Guardianship Order the birth parents remain the child's parents and retain parental responsibility, though their scope to exercise it is extremely limited. The Special Guardian has clear responsibility for day to day decisions about caring for the child and may exercise parental responsibility to the exclusion of others in all but a few circumstances for example change of surname or consent to adoption.

Unlike Adoption, a Special Guardianship Order can be varied or discharged by application to the Court, although parents must demonstrate a significant change in their circumstances and have leave from the Court to apply.

Special Guardianship Orders can be made during any family proceedings using the welfare of the child as the paramount consideration. Orders can be made on private law application when the Local Authority must provide a report about the suitability of the applicants.

For Looked After Children the granting of a Special Guardianship Order has the effect of discharging the child from Local Authority care.

If the child has been previously looked after the Local Authority has a duty to undertake an assessment for Special Guardianship support services when requested by the Special Guardian, the parent or the child.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656593/Special_guardianship_statutory_guidance.pdf

1.3 Why is Special Guardianship a positive permanence plan for children?

A Special Guardianship Order provides stability and legal security to a child providing the carer with a greater level of parental responsibility.

Although long term foster care is an important means of providing a family for Looked After Children who cannot be reunited with their own family it does not provide legal permanence. The child remains looked after by the Local Authority and for some children the statutory processes involved can seem intrusive and stigmatising.

Research shows that children in long term foster care lack a true sense of belonging. They fear they may be removed by the Local Authority or a parent, or the foster carer may ask for them to leave the placement. Foster carers can also feel some ambivalence as they lack the authority to act as parents and must constantly refer to the Local Authority in making decisions. If circumstances change they may not feel able to maintain their commitment to the child as they would if the child were a birth child, adopted or if they have a Special Guardianship Order.

2. Becoming a Special Guardian

2.1 Eligibility Criteria

To become a Special Guardian, you must be 18 years old or older.

Special Guardians can be a family member or friend, or another person with whom the child has lived for three of the last five years. They can also be an individual who already has a Residence Order, or a Child Arrangement Order for the child concerned or an individual who is already a testamentary guardian for the child.

It is important to note a parent cannot apply for Special Guardianship.

Any guardian of the child can also apply, as can a Local Authority foster carer with whom the child has lived continuously for one year immediately preceding the application.

If the child is in the care of the Local Authority, anyone who has the consent of the Local Authority can apply.

Any person who has the leave of the Court can also apply.

2.2 How do I become a Special Guardian:

You need to give the Local Authority three months written notice of your intention to make an application, during which time a qualified Social Worker will work alongside you to assess your suitability to be a Special Guardian. If there are current Court proceedings about the child, you are caring for or would want to care for then the Court may invite you to become part of these proceedings. The Court will ask the Local Authority to then write a report regarding your suitability to become a Special Guardian and then will decide whether you can be one.

2.3 Assessment Process

The assessment will cover the current and future needs of the child and the applicants. This should also be covered in the Special Guardianship support plan which will be presented to Court by the Local Authority.

Social Workers should ensure that within the assessment they have engaged with and gained the views of relevant adults, professionals and the child or children, including any children the applicants currently have.

The applicants will be seen at home together and separately and any child should be seen in the company of the applicants or an appropriate adult so that their view's thoughts and feelings can be obtained as part of the assessment. If you have other individuals who reside in your

property these will also be interviewed. All individuals will be subject to checks being undertaken.

The Social Worker preparing the assessment report will be responsible for the completion and submission of all relevant checks, which should include the following: (DBS Enhanced, Medical, LA, Probation, Health Authority, Education and CAFCASS). References will also be sought as of the assessment procedure which may include seeking references from Family Members, Friends, Employers and from any ex-partner.

When the assessment has been completed, if it reveals a need for services, the assessing social worker should present the case to the St Helens Council Legal Gateway / Resource Panel with the support plan. Any proposed support must be recommended by the Panel and endorsed by the agency decision maker.

The person being assessed must be given an opportunity to make representations by being sent their assessment and a draft proposed support plan, where this is needed. Unless they agree otherwise, or the Court directs, this period should be not less than 28 days. The person should be advised about sources of independent legal advice.

If Special Guardianship support services are to be provided on more than one occasion and are not limited to the provision of advice and information, then a Special Guardianship support plan must be produced.

The support plan and provision of services must be discussed with the relevant Team Manager.

Where financial support is to be paid as a single payment, this should have firstly been recommended via the St Helens Legal Gateway / Resource Panel and then endorsed by the Agency Decision Maker. This should be reflected upon in a signed support plan and a copy should be given to the finance officer.

3. Special Guardianship Support

3.1 Underpinning Principles

- Decisions about legal permanence should be based on the needs and best interests of children;
- It is not usually in children's interests to remain looked after throughout their childhood. Research shows that positive outcomes for children are more likely to be achieved through stable, legally permanent placements;
- Care Plans for children should address their permanence needs and plan for their discharge from care;
- Children are entitled to grow up as part of a loving family which can meet their needs during childhood and beyond. Children's needs are best met if they have a sense of belonging and security in a family who demonstrate a commitment to them;
- Foster carers should not be financially disadvantaged by securing legal permanence for the children they are caring for where this is part of the child's care plan and where it has been assessed that they can meet the child's needs;
- Young people aged over 14 years made subject to Special Guardianship Orders should not be disadvantaged by loss of entitlement to leaving care services for which they would have been eligible had they remained looked after.

St Helens Council have a statutory responsibility to make arrangements for the provision of Special Guardianship support services. These services are there to promote and support the placement of the child or young person with the Special Guardian. In St Helens this means that the Local Authority will meet with you at the beginning of the assessment to discuss your needs for Special Guardianship support. This is then usually followed up by further meetings where a final support plan will be drawn up and agreed and then presented to the Court.

On some occasions there may be no additional identified needs beyond those that a child or family would be able to access via universal services. If this is the case, then the relevant social worker should record this within the support plan.

Where a service is identified and available within the local community the social worker should signpost the applicant to that service and be provided with assistance to access the service. These services could be for counselling, advice and information and other services as assessed.

The Local Authority where the Special Guardian lives is always responsible for undertaking an assessment of need and the provision of any identified support services unless the child was in care immediately (including voluntary accommodation) prior to the making of the Special Guardianship Order.

If the child was in care immediately before the making of a Special Guardianship Order, responsibility for the assessment and provision of services remains with the Local Authority where the child was last in care for 3 years from the date of the order. If the family moves in this period or there is any other significant change in their circumstances, the responsible Local Authority may reassess their need for services and alter the support plan as appropriate.

A distinction is made between ongoing financial support (financial support which is paid on a regular basis) which was agreed before the Special Guardianship Order was made, and other support services. The assessment and provision of such financial support will remain the responsibility of the Local Authority who originally agreed it for as long as the family in question qualify for payments.

The Local Authority may exercise discretion to provide services to people outside their area in other circumstances where the Local Authority considers it appropriate.

3.2 Review of Support Plan

Support services provided within a Special Guardianship support plan must be reviewed if there is any change in the person's circumstances, which may affect the provision of Special Guardianship support services, comes to the notice of the Council. If the change of circumstances is relatively minor, the review may be limited to an exchange of correspondence.

The Adoption Team will monitor and review support plans. The format and content of the review will vary depending on the circumstances of the case. Notification of a change in circumstance or a review of the provision of support services is unlikely to necessitate direct contact between the Local Authority and the Special Guardian.

The review may be conducted by correspondence if appropriate. The annual review of financial support might be achieved by an exchange of correspondence.

Where a change of circumstances is relevant to only one service the review may be carried out with reference only to that service. Where the change of circumstances is substantial it may be appropriate to conduct a new assessment of needs. In these circumstances the Team Manager will need to allocate a social worker to complete an assessment.

If after the review it is decided to vary or terminate the provision of Special Guardianship support services, the matter should be returned to Legal Gateway prior to consideration by the ADM, the person must be given notice of the proposed decision and allowed time to make representations. (Any representations should be made under the Complaints Procedure.)

3.3 Parental responsibility:

Special Guardians have all the responsibility for the day-to-day decision making relating to the care and upbringing of the child or young person concerned.

There are however occasions when Special Guardians may need to consult with the child/young person/birth parents regarding important decisions, school attendance etc.

There are also some decisions that Special Guardians cannot make without gaining parental consent or permission from a Court, for example moving abroad, changing the child's or young person's name

3.4 Financial support provided:

Special Guardians can receive financial support unless the gross household income including savings and investments is greater than £50,000. If the gross household income exceeds this amount, then you will not be eligible for any Special Guardianship allowance.

We will deduct child tax credit and child benefit as you will be able to apply directly for these. As a Special Guardian you would have parental responsibility and are thus able to apply for these benefits directly. We would also deduct any other benefits or payments received for care of the child.

Financial support cannot duplicate any other payment available to the Special Guardian.

Regulation 9 states that financial support ceases to be payable to a Special Guardian or prospective Guardian if:

1. The child ceases to have a home with the Guardian
2. The child ceases full-time education or training and commences employment.
3. The child qualifies for Income support or jobseekers allowance.
4. The child reaches the age of 18 unless the child continues in full time education when it may continue until the end of the training or course.

Where the child needs special care, which requires a greater expenditure of resources than would otherwise be the case because of illness, disability, emotional or behavioural difficulties or the consequences of past abuse or neglect the Senior Assistant Director for Social Work and Community can consider offering a discretionary payment to ensure the child's needs can be met. Discretionary one-off or single payments may be considered for:

1. Legal costs and expenses (e.g. Court costs) and future Court costs.
Payments for legal costs are unlikely to be agreed where the Local Authority opposes the application for a Special Guardianship Order.
2. Provision of furniture and domestic equipment.
3. Proportionate alterations to and adaptation of the Special Guardian's home.
4. Provision of transport.
5. Support of contact arrangements where it is not appropriate for the Special Guardian to support contact.

3.5 Remuneration for former foster carers

In addition to Special Guardianship allowance, an element of remuneration to former foster carers may also be payable providing the decision to include it is taken before the Special Guardianship Order is made however this will as with all allowances be subject to annual review. The Local Authority will consider it necessary to facilitate arrangements for a person to become a Special Guardian where the Special Guardian or prospective Special Guardian has been a Local Authority foster parent in respect of the child(ren).

Any remuneration element ceases to be payable after 2 years from the making of the Order unless the Local Authority in individual cases considers the continuation to be necessary at the annual review. The Special Guardianship report and assessment report presented to the annual review should identify that need.

3.6 Calculation of Allowances:

The financial circumstances of any Special Guardian or proposed Special Guardian will be calculated using a means test model, developed by the Department of Education and Skills DfE calculator.

The financial information that is required for the means test should be gathered using the financial assessment form. To be assessed for financial support each applicant must provide details of their current income and expenditure (see section 17 for guidance). The information provided will be inputted into the DfE calculator.

The calculator will establish the amount to be paid prior to any financial allowance being agreed.

3.7 Allowance Rates

All Special Guardians are entitled to apply for the child's 'Child Benefit' payment. As such the Local Authority will deduct the equivalent of the child's child benefit entitlement from any financial support the Special Guardian has been assessed to be eligible for.

The allowance payable to eligible applicants is equivalent to the basic level of St Helens Fostering Rates. This will be reviewed if the assessed individual needs of the child concerned identifies that additional remuneration is required to meet that child's needs i.e. diagnosed complex health needs and severe disability.

For eligible applicants an age-related amount of allowance will also be paid each year for a holiday for the child, their birthday, and their chosen festival (such as Christmas or other religious celebration). Such payments will be equivalent to those payments made to looked after children.

All agreed allowances will increase in line with the age-related increments of the child at the time of the annual review and may be adjusted in line with inflation.

Any applicant who can demonstrate they are in receipt of Income Support does not require a Financial Means Assessment and is likely to be eligible for an allowance.

3.8 Annual Review:

There is an expectation that Special Guardians engage in an annual review of their support plan including the financial allowance for the duration of the Special Guardianship Order and confirm that the child remains in their sole care. The amount of ongoing financial support will be adjusted according to the outcome of each annual means test.

A financial form and a review letter will be sent to you on an annual basis as Special Guardians in regards your financial support.

The Local Authority may suspend any allowance if the requested information or a valid reason is not provided by the Special Guardian within the required time frame i.e. within 10 working days.

A reminder will be sent after 10 days giving the guardian a further 10 days to return their completed form or to provide the Local Authority with a reason for the delay.

The letter will also clearly outline the date that the Local Authority proposes to suspend payment should the requested information not be received.

3.9 Any Changes in Circumstances:

Special Guardians need to inform St Helens Council of any changes to their financial circumstances within 14 days of the changes occurring. These changes should then trigger a review of the payments that are made by St Helens Council and the level of payment may alter as a consequence of this financial review.

Any significant changes to the financial circumstances of the Special Guardian's household are likely to result in a change in the level of allowance that is awarded.

If Special Guardians fail to inform St Helens Council of any changes to their financial circumstances; St Helens Council reserves the right to seek a reimbursement of payments made to them.

3.10 Life Story work:

Life story work is an important support aspect, and this should be completed with children who are subject to a Special Guardianship Order and this should be identified within the support plan (where one is necessary)

3.11 Children with Disabilities

If you are Special Guardian to a child with disabilities, you may also meet the criteria for other services which would be determined via a Children and Families assessment.

A social worker from the Children with Disabilities Team will discuss this with you before a Special Guardianship order is made so that assessments can take place and services agreed.

3.12 Legal costs:

St Helens Council will consider payment of the Court application fee for all Special Guardians. In cases where birth parents challenge the plan for Special Guardianship you may need to appoint a solicitor to support you with your application. In these contested cases St Helens Council will consider contributing to your legal fees up to a maximum of £1000.

3.13 Links with the child's birth family:

Children living with Special Guardians in the main will have some contact with their birth family members be this direct contact, indirect in the form of letters, or phone calls. Special Guardians are asked to support this unless there are reasons why this is not appropriate.

In some cases, the family will be known to the Special Guardians and contact arrangements will not be contentious however in some cases supervised contact may be more appropriate to

ensure their wellbeing and the Council will support and on occasions facilitate this up to when the child reached 18.

3.14 Leaving Care Support:

The Special Guardianship Guidance notes that as a result of Regulation 22 of the Special Guardianship Regulations, 'Time spent under a Special Guardianship order is relevant when considering the child's entitlement to leaving care services. Section 24(2) of the Children Act defines a person qualifying for advice and assistance. This includes a young person aged 16 to 20 who immediately before the making of the Special Guardianship order was 'Looked After' by the Local Authority.

The Children Act 1989 defines 'Persons who may qualify for Advice and Assistance' and all the usual care leaving duties. The requirements are 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.

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 (Children Act 1989, Special Guardian Regulation 2005) clarifies that the responsible authority for providing advice and assistance under these provisions would be the Local Authority that last Looked After the young person. It also suggests however that depending on the service required it may be more appropriate for the young person to seek support locally where he is resident for example health care.

The advice and assistance that a Local Authority can provide, for a young person, is outlined in Children Act 1989 (24A), based on a needs assessment. A Local Authority may provide advice and befriending services and in exceptional circumstances give cash. A Local Authority can also contribute to expenses for education, training but it can be conditional and take income of parents into account. In some circumstances Local Authorities may also include birth parents in terms of these considerations if they are still involved in the young person's life.